



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

## 9 Functions with respect to Regulations

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

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

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

# Guide to the Digest

## COMMENT ON BILLS

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

### Ministerial Correspondence – Bills previously considered

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

## COMMENT ON REGULATIONS

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

### Regulations for the special attention of Parliament

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

### Regulations about which the Committee is seeking further information

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

### Copies of Correspondence on Regulations

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

## APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

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

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



# Conclusions

## PART ONE - BILLS

### 1. APPROPRIATION BILL 2013; APPROPRIATION (PARLIAMENT) BILL 2013; STATE REVENUE AND OTHER LEGISLATION (BUDGET MEASURES) BILL 2013

The Committee has not identified any issues arising under section 8A(1) of the Legislation Review Act 1987.

The Committee has not identified any issues arising under section 8A(1) of the Legislation Review Act 1987.

#### *Commencement by proclamation*

The Committee will always comment where commencement of an Act, or parts of an Act, are delegated to the Executive once passed by the Legislature. The Committee makes no further comment.

### 2. POLICE LEGISLATION AMENDMENT (SPECIAL CONSTABLES) BILL 2013

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

#### *Increase in penalties*

#### *Right to silence and right against self-incrimination*

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

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

#### *Commencement by Proclamation*

The Committee notes the Bill commences by proclamation. This makes it unclear when the Bill's new penalties and new requirements to answer the questions of inspectors under the *Prevention of Cruelty to Animals Act 1979* take effect.

### 3. PORTS ASSETS (AUTHORISED TRANSACTIONS) AMENDMENT BILL 2013

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

Denial of Compensation

The Committee notes the Principal Act excludes compensation rights, which may impact on the rights and liberties of individuals. The amendment Bill extends the Principal Act to a new port, Port of Newcastle. Given the objects of the amendment Bill, the Committee makes no further comment on the 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 corporations, including the Port Assets Ministerial Holding Corporation, are more appropriately included in legislation than regulations. However, given the objects of the amendment Bill, and the fact that the same arrangements are already in place for Ports Botany and Kembla under the Principal Act, the Committee makes no further comment.

**4. ROAD TRANSPORT AMENDMENT (LICENCE DISQUALIFICATION ON CONVICTION) BILL 2013**

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

**5. SECURITY INDUSTRY AMENDMENT (LICENCES) BILL 2013**

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

*Lack of clarity*

The Committee notes that listing “any Act that amends this Act” rather than listing the name of each of those amending Acts limits the clarity of the Schedule outlined above. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as the list relates to the regulation making power for provisions of a savings or transitional nature, and recognising the proposed insertion ensures that the Schedule is comprehensive, the Committee makes no further comment on the issue.

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

*Commencement by proclamation*

Although the Committee prefers legislation to commence on a fixed date or on assent, the Committee notes the Bill’s main aim is to broaden the categories of individual who can hold a security licence – not to remove individual rights or impose new restrictions or obligations on individuals. For this reason, the Committee makes no further comment on the issue.

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA**

*Subordinate legislation not tabled in Parliament or subject to disallowance*

The Committee notes the proposed modification of the regulation-making power in the principal Act which relates to requirements for security licensees’ uniforms and vehicles. The modification would make it clear that the regulations may provide for the making of determinations (including determinations by the Police Commissioner) regarding those matters. The Committee is concerned the modification may lead to a loss of Parliamentary scrutiny concerning such requirements.

**PART TWO – REGULATIONS**

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

## Part One - Bills

# 1. Appropriation Bill 2013; Appropriation (Parliament) Bill 2013; State Revenue and Other Legislation (Budget Measures) Bill 2013

Date introduced	18 June 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer and Minister for Industrial Relations

### PURPOSE AND DESCRIPTION

#### Appropriation Bill 2013

1. The object of this Bill is to appropriate from the Consolidated Fund various sums of money required during the 2013–14 financial year for the recurrent services and capital works and services of the Government, including:
  - (a) the principal departments, and
  - (b) various special offices.
2. The Consolidated Fund largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets.
3. The Bill contains an additional appropriation which allocates revenue raised in connection with gaming machine taxes to the Minister for Health and Minister for Medical Research for spending on health related services.

#### Appropriation (Parliament) Bill 2013

4. The object of this Bill is to appropriate out of the Consolidated Fund the following sums of money required during the 2013–14 financial year for the recurrent services and capital works and services of the Legislature:
  - (a) Recurrent Services \$117,078,000
  - (b) Capital Works and Services \$12,133,000.
5. The expenses and capital expenditure for relevant service groups of the Legislature are as follows:

LEGISLATION REVIEW COMMITTEE

APPROPRIATION BILL 2013; APPROPRIATION (PARLIAMENT) BILL 2013; STATE REVENUE AND OTHER LEGISLATION (BUDGET MEASURES) BILL 2013

	Expenses	Capital expenditure
Chamber and Committee Support	\$18,160,000	\$1,601,000
Members' Support	\$111,982,000	\$9,876,000
Community Access	\$7,429,000	\$656,000
Total	\$137,571,000	\$12,133,000

### State Revenue and Other Legislation (Budget Measures) Bill 2013

6. The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997* to defer the abolition of certain duties,
- (b) to amend the *First Home Owner Grant (New Homes) Act 2000* to extend the period during which a higher grant of \$15,000 (instead of \$10,000) is payable in respect of the purchase or construction of a new home under the first homeowner grant scheme,
- (c) to amend the *Health Insurance Levies Act 1982* to increase the levy payable under that Act,
- (d) to amend the *Payroll Tax Act 2007*:
  - (i) to increase the threshold amount for payroll tax, and
  - (ii) to remove provision for automatic indexation of the threshold,
- (e) to amend the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*:
  - (i) to increase the rebate payable in respect of the second year of eligible employment under the scheme, and
  - (ii) to provide for the closure of the scheme on 30 June 2015, and
  - (iii) to remove a requirement that the rebate be repaid in certain circumstances,
- (f) to amend the *Protection of the Environment Administration Act 1991* to establish an Environment Protection Authority Fund for regulatory and enforcement fees and charges payable to the Environment Protection Authority and to enable the money to be used by the Environment Protection Authority without further appropriation.

### BACKGROUND

- 7. These Bills give legislative effect to the 2013-2014 Budget.
- 8. Although they will be separate Acts when they become operative, the Appropriations Bill 2013, the Appropriation (Parliament) Bill 2013 and the State Revenue and Other Legislation Amendment (Budget Measures) Bill 2013 are cognate Bills. Therefore, all three Bills have been considered in one report.

## OUTLINE OF PROVISIONS

### Appropriation Bill 2013

#### *Part 1 Preliminary*

9. Clause 1 sets out the name (also called the short title) of the proposed Act.
10. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
11. Clause 3 interprets a reference to the financial year to which the proposed Act relates.
12. Clause 4 is an interpretive provision relating to expenses and capital expenditure information included in the proposed Act.

#### *Part 2 Appropriation (Departments)*

13. Part 2 (clauses 5–18) provides for the appropriations for the recurrent services and capital works and services of the specified departments for the financial year of 2013–14. The amounts appropriated are:
  - (a) \$48,154,291,000 for recurrent services, and
  - (b) \$4,623,803,000 for capital works and services.

#### *Part 3 Additional appropriation for health related services*

14. Part 3 (clauses 19 and 20) makes an additional appropriation of \$254,300,000 to the Minister for Health and Minister for Medical Research, with this being part of the revenue raised from gaming machine taxes.

#### *Part 4 Appropriation (Special Offices)*

15. Part 4 (clauses 21–30) provides for the appropriations for the recurrent services and capital works and services of the specified offices for the financial year of 2013–14.
16. The amounts appropriated are:
  - (a) \$265,262,000 for recurrent services, and
  - (b) \$23,507,000 for capital works and services.

#### *Part 5 General*

17. Part 5 (clauses 31–35) contains a provision for Commonwealth transfer payments and provides for general matters related to the appropriations set out in the proposed Act.
18. Clause 31 provides for transfer payments of \$3,068,300,000 from the Commonwealth to non-Government schools and local government.
19. Clause 32 enables the Treasurer to authorise payment for a purpose, in excess of the sum appropriated for the purpose, in specified circumstances. Clause 33 allows this function to be delegated by the Treasurer.
20. Clause 34 allows the Treasurer to apply an appropriation differently in the event that responsibility for a service or function is transferred.

## LEGISLATION REVIEW COMMITTEE

### APPROPRIATION BILL 2013; APPROPRIATION (PARLIAMENT) BILL 2013; STATE REVENUE AND OTHER LEGISLATION (BUDGET MEASURES) BILL 2013

21. Clause 35 allows a Minister to table a Budget Paper in the Legislative Assembly by presenting it to the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting when the Budget Paper is sought to be tabled.

#### Appropriation (Parliament) Bill 2013

22. Clause 1 sets out the name (also called the short title) of the proposed Act.
23. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
24. Clause 3 provides for the interpretation of a reference to the financial year to which the proposed Act relates and other matters of interpretation.
25. Clause 4 is an interpretative provision relating to expenses and capital expenditure information included in the proposed Act.
26. Clause 5 provides for the appropriation out of the Consolidated Fund, for the recurrent services of the Legislature for the financial year of 2013–14, of the amount of \$117,078,000.
27. Clause 6 provides for the appropriation out of the Consolidated Fund, for the capital works and services of the Legislature for the financial year of 2013–14, of the amount of \$12,133,000.

#### State Revenue and Other Legislation Amendment (Budget Measures) Bill 2013

28. Clause 1 sets out the name (also called the short title) of the proposed Act.
29. Clause 2 provides for the commencement of the proposed Act.
30. Clause 3 provides that explanatory notes in the Schedules do not form part of the proposed Act.
31. Schedules 1–6 make the amendments outlined in the Overview and other miscellaneous amendments. The amendments are explained in more detail in the explanatory notes set out in the Schedules.

## ISSUES CONSIDERED BY COMMITTEE

### Appropriation Bill 2013

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

### Appropriation (Parliament) Bill 2013

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

## State Revenue and Other Legislation Amendment (Budget Measures) Bill 2013

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

#### *Commencement by proclamation*

32. Clauses 4 and 18 of Schedule 1 of the Bill defer abolition of certain duties (which were due to be abolished on 1 July 2013) until a date to be appointed by proclamation. The duties to be affected are duty on transfers of marketable securities and commercial fishery shares, duty on transfers of business assets, duty on transfers of statutory licences or permissions and gaming machine entitlements, and mortgage duty.
33. Schedule 3 of the Bill, which relates to amendments to health insurance levies, is also to commence on a date to be appointed by proclamation.

**The Committee will always comment where commencement of an Act, or parts of an Act, are delegated to the Executive once passed by the Legislature. The Committee makes no further comment.**

## 2. Police Legislation Amendment (Special Constables) Bill 2013

Date introduced	19 June 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General and Minister for Justice

### PURPOSE AND DESCRIPTION

1. The objects of the Bill are as follows:

- (a) to repeal the *Police (Special Provisions) Act 1901* so as to abolish the office of special constable under that Act,
- (b) to amend the *Police Act 1990* to establish non-executive administrative officer (special constable) positions in the NSW Police Force and to provide for the transfer of certain employees currently holding office as special constables and performing security duties or Police Band duties to non-executive administrative officer (special constable) positions or other non-executive administrative officer positions,
- (a) to make consequential and minor amendments to the *Police Act 1990* and other legislation.

### BACKGROUND

- 2. Special constables are officers who undertake law enforcement, security and other related duties for the agencies in which they work. They include local government employees (such as council law enforcement officers), and RSPCA officers or individuals from animal welfare organisations registered as a charity under the *Fundraising Act 1991*. They also encompass officers within the NSW Police Force, including officers in the Security Management Unit, the Police Band and the Special Services Group.
- 3. The office of special constable was created to enhance police strength at times of unrest and when the NSW Police Force was in its infancy. Under Part 4 of the *Police (Special Provisions) Act 1990*, a magistrate or any two justices of the peace may appoint special constables at times of riot or where ordinary constables or officers are not sufficient for the preservation of peace and the protection of the community. However, the NSW Police Force is no longer in its infancy and the roles undertaken by special constables have evolved and changed significantly.
- 4. Current provisions under the *Police (Special Provisions) Act 1901* also confer on special constables all the powers, authorities, advantages and immunities of a police officer of the rank of constable. However, special constables are not subject to the discipline, control or oversight their sworn counterparts are subject to. There is also some question about the powers that special constables have had since the enactment of the *Law Enforcement (Powers and Responsibilities) Act 2002*.



5. The Bill seeks to address all the above issues and update the arrangements into line with contemporary realities.

## 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.

### **Schedule 1 Amendment of Police Act 1990 No 47**

#### *Amendments relating to abolition of special constables and creation of new positions*

8. The office of special constable is to be abolished by the repeal of the *Police (Special Provisions) Act 1901*. The proposed amendments make provision for employees currently holding the office of special constable who are either members of the NSW Police Force or who are not members of the NSW Police Force but subject to the day-to-day direction of the Commissioner of Police. This latter group comprises employees performing security duties or who are members of the Police Band.
9. Schedule 1 [1] inserts proposed section 82L. The proposed section enables the Commissioner to appoint a person to the position of non-executive administrative officer (special constable) within the Police Force. The Commissioner can confer on such an officer the functions of a police officer of the rank of constable, in which case, the officer will be subject to the same testing as police officers for integrity, gunshot residue and use of alcohol, prohibited drugs or steroids.
10. Schedule 1 [2] enables a special constable to wear a police uniform in the course of their duties as a special constable.
11. Schedule 1 [3] enables a Police Band member who is not a police officer to wear a police uniform while carrying out functions as a member of the Band.
12. Schedule 1 [4] is consequential on the amendment to the *Crimes Act 1900* by Schedule 3.1, confirming the status of law enforcement officers from other jurisdictions as law enforcement officers for the purposes of Division 8A of Part 3 of that Act.
13. Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of amendments made to the *Police Act 1990* by the proposed Act.
14. Schedule 1 [6] inserts savings and transitional provisions consequential on the abolition of the office of special constable under the *Police (Special Provisions) Act 1901*. Existing special constables appointed under that Act cease to hold office, but the repeal of that Act will not affect the validity of past actions by special constables. Existing special constables who are members of the Police Force will, on the repeal of the *Police (Special Provisions) Act 1901*, be taken to be appointed to certain positions. Those who are members of the Police Force solely by reason of being members of the Police Band will be taken to be appointed as non-executive administrative officers. They will not be special constables. Those who are members of the Police Force in the Security Management Unit, the Aviation Support Branch or the Advanced Technology Centre will be taken to be appointed as non-executive administrative officers (special constable).

Of those existing special constables who are not members of the Police Force but who are performing security duties subject to the day-to-day direction of the Commissioner of Police, the Minister may specify those that are transferred to the Police Force and appointed to the position of non-executive administrative officer (special constable).

Of those existing special constables who are not members of the Police Force but who are performing functions as members of the Police Band, the Minister may specify those who are transferred to the Police Force and appointed to the position of non-executive administrative officer.

Any such transfer will not give rise to any entitlements to any payments or other benefits merely by reason of the transfer and there will be no entitlement to be paid the money value of any accrued extended or annual leave or to receive dual benefits for the same period of service.

In relation to all appointments under the *Police Act 1990* that are consequent on the repeal of the *Police (Special Provisions) Act 1901*, the person concerned will be entitled to the same level of remuneration that the person was receiving immediately before the appointment and is to retain all existing leave and other employment entitlements.

## Schedule 2 Repeal of Act

15. Schedule 2 repeals the *Police (Special Provisions) Act 1901*.

## Schedule 3 Amendment of other legislation

16. Schedule 3.1 amends the *Crimes Act 1900* to include special constables within the meaning of proposed section 82L of the *Police Act 1990* and recognised law enforcement officers in the category of special victims of assault and other actions.
17. Schedule 3.2, 3.3, 3.4 [2], 3.5 [1], 3.6, 3.7, 3.8, 3.9 and 3.11 [1] remove references to special constables appointed under the *Police (Special Provisions) Act 1901* from various legislation and in most cases replace those references with references to the appropriate authorised person having existing investigative or enforcement powers.
18. Schedule 3.4 [1] confers on certain authorised council employees the power to give a direction (such as a direction to move on) to a person in a public place who is obstructing others or traffic.
19. Schedule 3.5 [2] allows an officer exercising powers under the *Prevention of Cruelty to Animals Act 1979* to require a person to give the person's name and address to request proof of that information.
20. Schedule 3.5 [3] confers on an inspector under the *Prevention of Cruelty to Animals Act 1979* the power to question persons whom the inspector reasonably suspects can provide information needed to exercise an inspector's powers under the Act or determine whether there has been a contravention of the Act or regulations.
21. Schedule 3.5 [4] allows an officer under the *Prevention of Cruelty to Animals Act 1979* to rely on a written statement previously prepared by that officer when giving evidence in chief for the prosecution in proceedings for an offence against the Act or regulations.

22. Schedule 3.5 [5] provides for officers under the *Prevention of Cruelty to Animals Act 1979* to retain that role when they cease to be special constables on the repeal of the *Police (Special Provisions) Act 1901*.
23. Schedule 3.10 exempts a person appointed as a non-executive administrative officer (special constable) from committing an offence under the *Weapons Prohibition Act 1998* only because of something that person has done in the course of the person's duties.
24. Schedule 3.11 [2] exempts an officer under the *Prevention of Cruelty to Animals Act 1979* from requiring a permit under the *Weapons Prohibition Regulation 2009* to possess and use handcuffs and extendable batons when acting in the course of the officer's duties.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Increase in penalties*

25. Clause 3.1 of Schedule 3 of the Bill makes special constables employed by the NSW Police Force and recognised law enforcement officers (that is, members of the Australian Federal Police or members of the police forces of other states and territories), 'special victims' of assault and certain other actions. This has the effect of increasing penalties for assaulting such a special constable or a police officer from another jurisdiction.
26. For example, currently, under section 108 of the *Police (Special Provisions) Act 1901*, the maximum penalty for assaulting a special constable in the execution of his or her office is 2 penalty units or six months imprisonment. However, the effect of clause 3.1 of Schedule 3 of the Bill will be that if a person assaults a special constable employed by the NSW Police Force (or a police officer from another jurisdiction) in the execution of his/her duty, and does him or her no actual bodily harm, the maximum penalty will be five years imprisonment<sup>1</sup>. In addition:
  - If a person assaults a special constable employed by the NSW Police Force or a police officer from another jurisdiction while in execution of his/her duty causing actual bodily harm the maximum penalty will be seven years imprisonment<sup>2</sup> (compared to a maximum of five years imprisonment for assaulting an ordinary citizen and causing actual bodily harm<sup>3</sup> - that is, a person who is not a 'special victim');
  - If a person recklessly causes grievous bodily harm to a special constable employed by the NSW Police Force or a police officer from another jurisdiction while in execution of his/her duty the maximum penalty will be 12 years imprisonment<sup>4</sup> (compared to a maximum of 10 years imprisonment for recklessly causing grievous bodily harm to an ordinary citizen<sup>5</sup>).

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<sup>1</sup> Section 60A(1) *Crimes Act 1900*, see also section 60AA.

<sup>2</sup> Section 60A(2) *Crimes Act 1900*.

<sup>3</sup> Section 59 *Crimes Act 1900*.

<sup>4</sup> Section 60A(3) *Crimes Act 1900*.

<sup>5</sup> Section 35(2) *Crimes Act 1900*.

The Committee notes the increases in penalties imposed on individuals who assault: (a) special constables employed by the NSW Police Force (b) members of the Australian Federal Police, and (c) members of the police forces of other States and Territories, while these officers are executing their duty. The Committee particularly notes that an increase in the maximum penalties may be considered disproportionate to the offences.

However, the Committee also notes the dangerous nature of certain police work and the quasi police functions that special constables employed by the NSW Police Force perform. Given the vital role special constables and police officers play in keeping the community safe, assaulting special constables in the execution of their duty is a serious matter. For this reason the Committee makes no further comment on the issue.

### *Right to silence and right against self-incrimination*

27. Clause 3.5 [3] of Schedule 3 of the Bill confers a power on an inspector under the *Prevention of Cruelty to Animals Act 1979* to question persons whom the inspector reasonably suspects can provide information needed to exercise an inspector's powers under the Act or determine whether there has been a contravention of the Act or regulations. A person cannot, without reasonable excuse, refuse or fail to answer such questions and if they do, the maximum penalty is 25 penalty units. "Reasonable excuse" is not defined by the Bill. It is noted that contraventions of the Act can result in criminal proceedings and terms of imprisonment.

**In the Committee's view, requiring a person to provide information to another person or body, under threat of punishment, runs contrary to that person's right to silence. However, as the penalty for failure to provide the information is not serious (25 penalty units), and in light of the animal welfare objectives of the Bill, the Committee makes no further comment on this issue.**

**However, the Bill may infringe on the person's right against self-incrimination. As this could potentially lead to a term of imprisonment, the Committee refers this issue to Parliament for further consideration.**

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

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

### *Commencement by Proclamation*

28. Proposed section 2 provides that the Bill is to commence by proclamation. The Committee prefers legislation to commence on a fixed date or on assent, especially where it may impact on the rights of individuals, for example, by increasing penalties or requiring individuals to answer questions.

**The Committee notes the Bill commences by proclamation. This makes it unclear when the Bill's new penalties and new requirements to answer the questions of inspectors under the *Prevention of Cruelty to Animals Act 1979* take effect.**

## 3. Ports Assets (Authorised Transactions) Amendment Bill 2013

Date introduced	19 June 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Treasurer and Minister for Industrial Relations

### PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
  - (a) to amend the *Ports Assets (Authorised Transactions) Act 2012* (the Principal Act) to extend that Act to the Port of Newcastle so as to authorise and facilitate the transfer to the private sector of the State's ports assets at Port of Newcastle, and
  - (b) to make consequential amendments to the *Ports and Maritime Administration Act 1995* to extend the special regulatory regime under that Act for private ports to Port of Newcastle and to authorise the private port operator of Port of Newcastle to impose navigation service charges for the port.
2. The transfer of ports assets at Port of Newcastle to the private sector will be 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.

### BACKGROUND

3. In his second reading speech, the Treasurer advised that the amendment Bill will authorise the lease of the State's port assets at the Port of Newcastle to the private sector.
4. The Treasurer noted a 99 year lease of the State's port assets at Port Botany and Port Kembla has already recently taken place under the Principal Act and that the amendment Bill will extend the scope of that Act to include the Port of Newcastle.
5. The Treasurer indicated the same restrictions that applied to the Port Botany and Port Kembla transactions would apply to the Port of Newcastle, and that the amendment Bill will not introduce any new policy, or affect regulatory powers besides those already applied to Port Botany and Port Kembla.
6. The Treasurer also noted the lease of the Port of Newcastle would provide millions of dollars to fund critical infrastructure across NSW, and that \$340 million would be invested to re-vitalise Newcastle.

### OUTLINE OF PROVISIONS

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

8. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
9. Schedule 1 amends the Principal Act to extend that Act to Port of Newcastle so as to authorise and facilitate the transfer to the private sector of the State's ports assets at Port of Newcastle.
10. Schedule 2 makes consequential amendments to the *Ports and Maritime Administration Act* 1995 to extend the special regulatory regime under that Act for private ports to Port of Newcastle and to authorise the private port operator of Port of Newcastle to impose navigation service charges for the port.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Denial of Compensation*

11. The amendment Bill retains section 30 of the Principal Act which excludes any right to compensation that arises because of the enactment or operation of the Act.

**The Committee notes the Principal Act excludes compensation rights, which may impact on the rights and liberties of individuals. The amendment Bill extends the Principal Act to a new port, Port of Newcastle. Given the objects of the amendment Bill, the Committee makes no further comment on the issue.**

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

#### *Functions in the regulations*

12. The amendment Bill retains section 12(4) of the Principal Act which provides that the regulations may prescribe additional functions of a port state-owned corporation. Schedule 1 of the amendment Bill also creates a new port state-owned corporation, Newcastle Port Corporation.
13. Further, the amendment Bill retains section 13(6)(c) of the Principal Act. Section 13(6)(c) provides that further functions of the Ports Assets Ministerial Corporation, for the purpose of transfer of a ports asset, may be outlined in the regulations.

**The Committee notes that functions of state owned corporations, including the Port Assets Ministerial Holding Corporation, are more appropriately included in legislation than regulations. However, given the objects of the amendment Bill, and the fact that the same arrangements are already in place for Ports Botany and Kembla under the Principal Act, the Committee makes no further comment.**

## 4. Road Transport Amendment (Licence Disqualification on Conviction) Bill 2013

Date introduced	19 June 2013
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General and Minister for Justice

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Road Transport Act 2013* to provide that, where a person is:
  - (a) disqualified for a specified period from holding a driver licence as a consequence of being convicted of certain serious driving offences, and
  - (b) sentenced to imprisonment because of such a conviction,

the specified period of disqualification is extended so that the period of disqualification is served after the person is released from detention.

### BACKGROUND

2. The Bill seeks to fix an anomaly in the current law, which allows a person convicted of a serious driving offence, such as dangerous driving occasioning death, to serve part or all of their licence disqualification period at the same time as serving a term of imprisonment.
3. This anomaly was highlighted in a recent case where the offender was convicted of aggravated dangerous driving occasioning death. The offender had their licence disqualified for five years and was also sentenced to imprisonment for five years. The licence disqualification period was served while the individual was imprisoned, having little or no effect given that they were not in a position to drive in any case.
4. The Bill has been developed following consultation with relevant agencies including the Department of Premier and Cabinet, Transport for NSW, the Department of Attorney General and Justice, the Ministry for Police and Emergency Services and Roads and Maritime Services.

### OUTLINE OF PROVISIONS

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

### **Schedule 1 Amendment of Road Transport Act 2013 No 18**

7. Schedule 1 inserts proposed section 206A into the Act to give effect to the object outlined in the purpose and description section, above. The proposed section applies to major offences within the meaning of the Act (such as dangerous driving causing death or serious injury and offences involving alcohol or drugs) and also second or subsequent offences under section 115 (Races, attempts on speed records and other speed trials) and section 116(2) (Conduct associated with road and drag racing and other activities). The proposed section will not apply to any period the convicted person is released on parole nor to sentences that are to be served in the community or by way of home detention.

### **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.**



## 5. Security Industry Amendment (Licences) Bill 2013

Date introduced	13 June 2013
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Minister for Police and Emergency Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Security Industry Act 1997* (the principal Act) to resolve to resolve an inconsistency between the principal Act and Australia's international trade commitments under the General Agreement on Trade in Services. The Bill seeks to do this by allowing persons who hold certain visas entitling them to work in Australia to apply for a licence under the principal Act.

The Bill also makes minor and consequential amendments to the principal Act and to the *Firearms Act 1996*.

### BACKGROUND

2. Under existing free trade agreements, including the General Agreement on Trade in Services, Australia must treat the service suppliers of its free trade agreement partners in a way that is no less favourable than the way in which it treats its Australian service suppliers.
3. Currently, under section 15 of the principal Act, only Australian citizens and permanent residents can obtain a security industry licence in NSW. This may restrict the ability of foreign suppliers to engage in security-related activities in NSW. This is inconsistent with Australia's General Agreement on Trade in Services commitments.
4. The Bill seeks to address this by allowing holders of a valid temporary visa that permits employment in Australia (other than a student visa or a working holiday visa) to apply for a NSW security industry licence.

### 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 Security Industry Act 1997 No 157

7. Schedule 1 [2] modifies a restriction on granting licences under the principal Act so as to allow licences to be granted to persons who hold visas entitling them to work in Australia (other than student visas or working holiday visas). Currently, only Australian

citizens or permanent Australian residents may be granted licences. The object of the amendment is to resolve an inconsistency between the principal Act and Australia's commitments under, and in the context of, the GATS.

8. Schedule 1 [3] inserts consequential definitions.
9. Schedule 1 [1] removes a requirement for certain information and particulars required for making an application for a licence under the principal Act to be lodged with the application form.
10. Schedule 1 [4] exempts a licensee from having to produce or wear a licence that has become illegible, during the period between lodging an application for a replacement licence and the issuing of the replacement licence.
11. Schedule 1 [6] modifies a regulation-making power relating to the wearing of, and the character or design of, licensees' uniforms and the markings on, and design of features of, vehicles used in carrying on security activities, to make it clear that the regulations may provide for the making of determinations (including determinations by the Commissioner of Police) in relation to those subject matters.
12. Schedule 1 [5] omits the existing regulation-making power in relation to those subject matters.
13. Schedule 1 [7] enables savings and transitional regulations to be made as a consequence of the proposed Act or any other Act that amends the principal Act.

## Schedule 2 Amendment of Firearms Act 1996 No 46

14. Schedule 2 provides for regulations under the *Firearms Act 1996* to determine the requirements for direct supervision for the purposes of a statutory condition imposed on a provisional pistol (business/employment) licence under that Act which requires licensees to be under the direct supervision of certain competent persons for the first 6 months of the term of the licence.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Lack of clarity*

15. Clause 1(1) of Schedule 2 of the principal Act outlines that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of a list of named Acts. Clause 7 of Schedule 1 of the Bill seeks to insert at the end of that list of Acts "any Act that amends this Act".

**The Committee notes that listing "any Act that amends this Act" rather than listing the name of each of those amending Acts limits the clarity of the Schedule outlined above. The Committee prefers the name of each Act to be listed to avoid this lack of clarity. However, as the list relates to the regulation making power for provisions of a savings or transitional nature, and recognising the proposed insertion ensures that the Schedule is comprehensive, the Committee makes no further comment on the issue.**

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

### *Commencement by proclamation*

16. Clause 2 of the Bill provides that the Bill is to commence on proclamation. The Committee prefers legislation to commence on a fixed date or on assent especially where it directly impacts on the rights and obligations of individuals. However, the main aim of the Bill is to broaden the categories of individual who can hold a security licence, not to remove individual rights or impose new restrictions or obligations on individuals.

**Although the Committee prefers legislation to commence on a fixed date or on assent, the Committee notes the Bill's main aim is to broaden the categories of individual who can hold a security licence – not to remove individual rights or impose new restrictions or obligations on individuals. For this reason, the Committee makes no further comment on the issue.**

## Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

### *Subordinate legislation not tabled in Parliament or subject to disallowance*

17. Clause 6 of Schedule 1 of the Bill modifies the regulation-making power in the principal Act relating to: (a) the wearing of, and the character or design of, licensees' uniforms and (b) the markings on, and design of features of, vehicles used in carrying on security activities; to make it clear that the regulations may provide for the making of determinations, including determinations by the Commissioner of Police, in relation to those subject matters. Clause 5 of Schedule 1 omits the existing regulation-making power in relation to these matters.
18. The intention of the modification is to allow amendments to the Commissioner's guidelines from time to time to reflect contemporary standards.

It is unclear whether, as a result of this modification, it will now be possible to amend the Commissioner's guidelines on these matters without the need for an amending regulation. This is of concern to the Committee given that, some of the provisions on these matters, which are currently contained in the regulation, exact penalties on individuals (for example, there is a penalty of 2 penalty units for not wearing a uniform in connection with the carrying on of a security activity).

19. Although the power to create rules with penalties in subordinate legislation would not ordinarily present issues, it appears that unlike regulations, there is no requirement for the Commissioner's guidelines to be tabled in Parliament. As such, they are not subject to disallowance by Parliament under section 41 of the *Interpretation Act 1987*.
20. The Committee is of the view that any changes to requirements in relation to these matters, whether they are contained in regulations or guidelines, should be subject to the scrutiny of Parliament.

**The Committee notes the proposed modification of the regulation-making power in the principal Act which relates to requirements for security licensees' uniforms and vehicles. The modification would make it clear that the regulations may provide for the making of determinations (including determinations by the Police Commissioner) regarding those matters. The**

**Committee is concerned the modification may lead to a loss of Parliamentary scrutiny concerning such requirements.**

## Part Two – Regulations

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

# Appendix One – Index of Ministerial Correspondence on Bills

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

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

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