



Legislation Review Committee

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

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Membership

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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*.

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.

Conclusions

PART ONE - BILLS

1. BAIL AMENDMENT BILL 2015; TERRORISM (POLICE POWERS) AMENDMENT BILL 2015

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

Right to Liberty

The Committee notes that the Bill extends the operation of a scheme for preventative detention orders. This impacts on the right to liberty by allowing people to be imprisoned by the State without charge and without trial. However, the Committee notes that a recent review of the *Terrorism (Police Powers) Act 2002* found that preventative detention orders remain necessary for police to deal with terrorist threats. Similarly, the preventative detention order provisions contain a number of safeguards to guard against abuse of these extraordinary powers. For example, questioning the imprisoned person is prohibited. Given the circumstances, the Committee makes no further comment.

Presumption of Innocence

The Bill expands the circumstances in which an accused person must show cause why he or she should be granted bail. Putting this onus on the defendant impacts on the presumption of innocence, a principle that requires the prosecution to establish a person's guilt before imprisoning or otherwise punishing him or her. However, the show cause amendments were recommended by His Honour Judge Hatzistergos following community concern about bail decisions and His Honour found in his recent final report that the amendments are operating well. There was a similar provision under the repealed *Bail Act 1978*. In the circumstances, the Committee makes no further comment.

Presumption of Innocence II

The Bill requires certain people to prove that exceptional circumstances exist that justify a decision to grant them bail. The Committee notes the particularly high burden of proof in these cases. Putting this onus on the defendant impacts on the presumption of innocence, a principle that requires the prosecution to establish a person's guilt before imprisoning or otherwise punishing him or her. However, an exceptional circumstances test is appropriate in light of recent events and the extraordinary harm that can be caused by terrorism. The new test will only apply to a limited class of people and exceptional circumstances test already applies to Commonwealth terrorism offences under the *Crimes Act 1914* (Cth). In the circumstances, the Committee makes no further comment.

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

Lack of Clarity

The Committee notes that listing 'any other Act that amends this Act' rather than listing the name of each of those amending Acts limits the clarity of schedule 1, item 23 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation-making power for provisions of a

transitional nature, and recognising that 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

The Committee prefers Bills such as the *Bail Amendment Bill 2013*, which impact on individual rights and liberties, to commence on a fixed date, or on assent, and not by proclamation.

2. CLIMATE CHANGE BILL 2015*

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

3. COURTS AND OTHER JUSTICE PORTFOLIO LEGISLATION AMENDMENT BILL 2015

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

Right to Access Government Information

By providing that there will no longer be any second decision required about whether to disclose certain documents that the State Parole Board has decided to keep private, the Bill removes a layer of oversight of decisions that deny people access to government information. The right to access government information is an important means to ensure transparency in government decision making. It also allows people to obtain information that the government holds about them. However, there can be important reasons for withholding such information which may be relevant in this case, for example, where disclosure would jeopardise the conduct of a lawful investigation or it may disclose the contents of any offender's medical history. The Committee makes no further comment.

4. CRIMINAL PROCEDURE AMENDMENT (CHILD SEXUAL OFFENCE EVIDENCE PILOT) BILL 2015

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

Right to a fair trial

The Committee notes that pre-recording the evidence of child witnesses may impact on an accused's right to a fair trial. Requiring an accused to cross-examine a witness before the trial has begun means they will be required to prepare and disclose their case in advance. This may provide the prosecution with further avenues for investigation and time to alter their case.

However, it is the Committee's view that the advantages in pre-recording a child's evidence outweigh these concerns. The Committee considers that pre-recording a child's evidence will improve the quality of the evidence obtained and, most importantly, protect vulnerable witnesses. The Committee makes no further comment.

5. GREATER SYDNEY COMMISSION BILL 2015

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

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

6. FISHERIES MANAGEMENT AMENDMENT BILL 2015

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

7. HEALTH LEGISLATION AMENDMENT BILL 2015

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

Privacy

The Committee notes that a searchable database of health service providers with prohibition orders placed on them may be considered an interference with their privacy by publicly 'naming and shaming' them for past errors.

However, the Committee also recognises the public policy objectives in protecting health consumers and providing the public with critical information about health service providers that are subject to various restrictions and conditions. In this respect, the register does not appear to be punitive against the practitioner in its intent, but cautionary for the public. The Committee also notes that provisions for similar warnings and public statements already exist under the *Health Care Complaints Act 1993*. The Committee makes no further comment.

8. HOME BUILDING AND DUTIES AMENDMENT (LOOSE-FILL ASBESTOS INSULATION AFFECTED PREMISES) BILL 2015

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

9. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (STOCK ANIMALS) BILL 2015*

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

Strict liability

The Committee notes that the Bill introduces strict liability in relation to three proposed offences. The Committee will always comment where strict liability occurs as the Crown is not required to prove intent, negligence or recklessness on the part of the accused.

The Committee understands that in many cases, especially regulatory settings, strict liability is common and reasonable. Strict liability clauses are designed to ensure compliance with regulatory measures and usually involve small financial penalties for non-compliance.

However, in this particular case the Committee is concerned that a period of imprisonment applies in relation to the offences. As such, the Committee refers to Parliament whether these provisions trespass unduly on personal rights and liberties.

Privacy

The Committee notes the objectives of the Bill are to ensure the humane treatment of stock animals. However, the Committee also has concerns over the potential breach of privacy to owners and staff who are to be recorded at all times whilst at the place of their employment. The Committee makes no further comment.

10. PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT (EXEMPTIONS CONSOLIDATION) BILL 2015

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

Privacy

The Committee notes that the Bill authorises the exchange of personal information to the exclusion of the information protection principles under the *Privacy and Personal Information Protection Act 1998*. It thereby impacts on the privacy rights of individuals. However, the Committee notes that the Bill broadly preserves the status quo regarding the management of personal information by public sector agencies. The Committee further notes that the exemptions to privacy protection requirements have been drafted to apply in cases where the weight of public interest falls on the side of disclosure of information; and that the Privacy Commissioner has been consulted and supports the Bill. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

The Committee prefers Bills such as this one, which impact on individual rights, to commence on a fixed date, or on assent, and not by proclamation.

11. REGULATORY REFORM AND OTHER LEGISLATIVE REPEALS BILL 2015;
OCCUPATIONAL LICENSING NATIONAL LAW REPEAL BILL 2015

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

12. RETAIL TRADING AMENDMENT BILL 2015

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

13. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2015

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

14. TREASURY CORPORATION AMENDMENT BILL 2015; SUPERANNUATION
ADMINISTRATION AMENDMENT (INVESTMENT MANAGEMENT AND OTHER
MATTERS) BILL 2015; STATE INSURANCE AND CARE GOVERNANCE AMENDMENT
(INVESTMENT MANAGEMENT) BILL 2015

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

Commencement by proclamation

The Committee prefers legislation to commence on assent or a fixed date. However, these Bills implement extensive changes to the State's key funds management activities and as such the Committee considers flexibility as to their commencement may be required.

Part One - Bills

1. Bail Amendment Bill 2015; Terrorism (Police Powers) Amendment Bill 2015

Date introduced	20 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The object of the *Terrorism (Police Powers) Amendment Bill 2015* is to amend the *Terrorism Police Powers Act 2002* to extend the operation of the scheme in the Act for preventative detention orders for a further 3 years, following the expiration of the current sunset period on 16 December 2015; and to remove the authority of the Commissioner and staff of the NSW Crime Commission to exercise powers under covert search warrants under the Act.
2. The object of the *Bail Amendment Bill 2015* is to amend the *Bail Act 2013* in response to the following reports and reviews:
 - (a) The *Review of the Bail Act 2013 (Final Report)* by Judge Hatzistergos dated June 2015;
 - (b) The *Bail – Additional show cause offences* report by the NSW Sentencing Council dated May 2015;
 - (c) The *Martin Place Siege Joint Commonwealth – NSW Review* dated January 2015.

BACKGROUND

3. The *Terrorism (Police Powers) Amendment Bill 2015* and the *Bail Amendment Bill 2015* were introduced into Parliament as cognate Bills. In her second reading speech, the Hon Gabrielle Upton MP, Attorney General, stated that the Bills are part of the Government's work to protect the community from the risk of terrorism.
4. Ms Upton explained that the Bills will ensure that the NSW Police Force can continue to apply for preventative detention orders to detain a person for up to 14 days where it is necessary to prevent a terrorist act or preserve evidence following a terrorist act. Ms Upton also stated that the Bills will amend the *Bail Act 2013* to provide that some people accused of a criminal offence can be released on bail only if there are exceptional circumstances. This would include people charged with any offence for which a custodial sentence may be imposed who are subject to a terrorism control order or who have a previous terrorism conviction.

5. Further, as a result of the Bills, links with terrorist organisations and support for violent extremism will be added to the list of matters taken into account when making a bail decision.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Liberty

6. Part 2A of the *Terrorism (Police Powers) Act 2002* establishes a scheme for preventative detention orders. Under the scheme, NSW Police can apply to the Supreme Court for a preventative detention order that enables a person to be detained without charge for up to 2 weeks.
7. Such an order can be made if there is a reasonable suspicion that a person will engage in a terrorist act; or has done an act in preparation for or planning a terrorist act; and the order will prevent the terrorist act occurring. The orders can also be made where a terrorist act has occurred in the past 28 days and the order is reasonably necessary to preserve evidence.
8. The *Terrorism Police Powers Amendment Bill 2015* extends the scheme, which is due to sunset on 16 December 2015, for another three years, until 16 December 2018.

The Committee notes that the Bill extends the operation of a scheme for preventative detention orders. This impacts on the right to liberty by allowing people to be imprisoned by the State without charge and without trial. However, the Committee notes that a recent review of the *Terrorism (Police Powers) Act 2002* found that preventative detention orders remain necessary for police to deal with terrorist threats. Similarly, the preventative detention order provisions contain a number of safeguards to guard against abuse of these extraordinary powers. For example, questioning the imprisoned person is prohibited. Given the circumstances, the Committee makes no further comment.

Presumption of Innocence

9. Under the *Bail Act 2013*, the onus is on a person charged with certain offences to show cause why he or she should be granted bail. Schedule 1, item 3 of the *Bail Amendment Bill 2015* expands the circumstances under which a person must show cause to obtain bail.

The Bill expands the circumstances in which an accused person must show cause why he or she should be granted bail. Putting this onus on the defendant impacts on the presumption of innocence, a principle that requires the prosecution to establish a person's guilt before imprisoning or otherwise punishing him or her. However, the show cause amendments were recommended by His Honour Judge Hatzistergos following community concern about bail decisions and His Honour found in his recent final report that the amendments are operating well. There was a similar provision under the repealed *Bail Act 1978*. In the circumstances, the Committee makes no further comment.

Presumption of Innocence II

10. Schedule 2, item 4 provides that a bail authority must refuse to grant bail to certain people (including people charged with a custodial offence who are subject to a terrorism control order or who have a previous terrorism conviction) unless the person shows that exceptional circumstances exist to justify a decision to grant bail. Proving exceptional circumstances exist is a higher burden of proof than showing cause why bail should be granted.

The Bill requires certain people to prove that exceptional circumstances exist that justify a decision to grant them bail. The Committee notes the particularly high burden of proof in these cases. Putting this onus on the defendant impacts on the presumption of innocence, a principle that requires the prosecution to establish a person's guilt before imprisoning or otherwise punishing him or her. However, an exceptional circumstances test is appropriate in light of recent events and the extraordinary harm that can be caused by terrorism. The new test will only apply to a limited class of people and exceptional circumstances test already applies to Commonwealth terrorism offences under the *Crimes Act 1914* (Cth). In the circumstances, the Committee makes no further comment.

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

Lack of Clarity

11. Schedule 1, item 23 of the *Terrorism (Police Powers) Amendment Bill 2015* provides that the regulations may include provisions of a savings or transitional nature consequent upon the enactment of the proposed Act or 'any other Act that amends this Act'.

The Committee notes that listing 'any other Act that amends this Act' rather than listing the name of each of those amending Acts limits the clarity of schedule 1, item 23 of the Bill. The Committee would prefer the name of each Act to be listed to avoid this lack of clarity. However, as the relevant provision relates to the regulation-making power for provisions of a transitional nature, and recognising that 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

12. Clause 2 of the *Bail Amendment Bill 2013* provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

The Committee prefers Bills such as the *Bail Amendment Bill 2013*, which impact on individual rights and liberties, to commence on a fixed date, or on assent, and not by proclamation.

2. Climate Change Bill 2015*

Date introduced	22 October 2015
House introduced	Legislative Council
Minister responsible	Ms Jan Barham MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to set targets to reduce greenhouse gas emissions,
 - (b) to facilitate the Government's development of strategies, policies and programs to meet those targets and to adapt to the effects of climate change,
 - (c) to promote transparency and accountability by facilitating the provision of accessible information about the effects of climate change on people, communities and ecosystems across the State,
 - (d) to encourage the local government sector, the private business sector and the wider community to take action to address climate change.

BACKGROUND

2. In the Second Reading Speech, Ms Jan Barham MLC stated that this Bill seeks to ensure that the laws of New South Wales prioritise reducing the risks and impacts of climate change. Ms Barham commented that if global warming and its impact on our climate is not addressed, 'we will leave an unsafe environment and a compromised quality of life to those who will inherit the consequences of our inaction.'

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. Courts and Other Justice Portfolio Legislation Amendment Bill 2015

Date introduced	20 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to amend the *Civil Procedure Act 2005* in relation to payments attached to garnishee orders, persons under legal incapacity, judgment debts and interest paid on orders for costs,
- (b) to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* as a consequence of amendments to the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth in relation to conditional cultural exemptions,
- (c) to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to extend reporting periods for child deaths and to require reports to be on all child deaths during the reporting period,
- (d) to amend the *Crimes (Sentencing Procedure) Act 1999* to make it clear that a court may consider work arrangements in another State or Territory when considering whether to make a community service order with respect to an offender,
- (e) to amend the *Criminal Procedure Act 1986* to clarify provisions relating to the commencement of proceedings for offences (including common law offences) by police officers and public officers,
- (f) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to make it clear that all parties' interests must be considered before the court makes a direction that a person may give evidence or make a submission by audio link or audio visual link,
- (g) to amend the *Fines Act 1996* to make it clear that a monetary penalty imposed by a court for contempt is a fine that may be collected by the State Debt Recovery Office,
- (h) to amend the *Government Information (Public Access) Act 2009* to provide that certain information held by the State Parole Authority is information for which there is a conclusive presumption against disclosure,
- (i) to amend the *Legal Aid Commission Act 1979* to ensure that the rights of appeal under that Act extend to the determination or redetermination of online applications,

- (j) to amend the *Legal Profession Uniform Law Application Act 2014* with respect to procedures for costs assessment and the appointment of acting and retired judges to the Legal Profession Admission Board,
- (k) to provide for fees for applications for orders under the *Community Land Management Act 1989* and the *Strata Schemes Management Act 1996* to be set under the *Civil and Administrative Tribunal Act 2013*.

BACKGROUND

- 2. This Bill makes a number of amendments to legislation affecting the operation of courts and tribunals in New South Wales and to other justice related legislation. The Bill is part of the regular review and monitoring process of legislation and is aimed at improving the administration of justice in New South Wales.

ISSUES CONSIDERED BY COMMITTEE

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

Right to Access Government Information

- 3. Section 194 of the *Crimes (Administration of Sentences) Act 1999* allows the Parole Authority to determine that certain documents should not be disclosed. However, if an application for the same documents is lodged under the *Government Information (Public Access) Act 2009* (the GIPA Act), a second decision as to whether to disclose the documents must be made under the GIPA Act.
- 4. Clause 1.11 of the Bill amends the GIPA Act to provide that documents that have been subject to a decision by the State Parole Authority under section 194 of the *Crimes (Administration of Sentences) Act 1999* are to be subject to the conclusive presumption of overriding public interest against disclosure. That is, there will no longer be any second decision required about whether to disclose the documents.
- 5. Factors relevant to a decision under section 194 *Crimes (Administration of Sentences) Act 1999* to not disclose certain documents are similar to the factors that are required to be assessed under the GIPA Act. They include, but are not limited to, that disclosing the document may: jeopardise the conduct of any lawful investigation; prejudice the public interest; and disclose the contents of any offender's medical, psychiatric or psychological report.

By providing that there will no longer be any second decision required about whether to disclose certain documents that the State Parole Board has decided to keep private, the Bill removes a layer of oversight of decisions that deny people access to government information. The right to access government information is an important means to ensure transparency in government decision making. It also allows people to obtain information that the government holds about them. However, there can be important reasons for withholding such information which may be relevant in this case, for example, where disclosure would jeopardise the conduct of a lawful investigation or it may disclose the contents of any offender's medical history. The Committee makes no further comment.

4. Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Bill 2015

Date introduced	22 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The *Criminal Procedure Act 1986* (the Principal Act) contains provisions with respect to the giving of evidence in criminal proceedings by certain vulnerable persons in the form of recordings of previous representations and by closed-circuit television or similar technology in court proceedings. The object of this Bill is to amend the Principal Act to give effect to a pilot scheme that augments those provisions by:
 - (a) providing for the evidence (including evidence in cross-examination and re-examination) of children who are complainants in indictable proceedings in the District Court in relation to prescribed sexual offences (within the meaning of the Principal Act) to be pre-recorded at hearings in the absence of the jury (if any), and
 - (b) for such evidence to be given with the assistance of a children’s champion (or “witness intermediary”) whose role is to facilitate the communication of, and with, such children.

BACKGROUND

2. This Bill continues the Government’s implementation of the recommendations of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. In its report, *Every Sentence Tells a Story*, the Joint Select Committee recommended procedural reforms to reduce the stress and duration of court proceedings for child witnesses in child sexual assault cases.

ISSUES CONSIDERED BY COMMITTEE

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

Right to a fair trial

3. This Bill provides for the pre-recording of a child’s evidence, including evidence in cross-examination and re-examination. A child is a witness less than 16 years old and the evidence is to be pre-recorded in the absence of the jury.

The Committee notes that pre-recording the evidence of child witnesses may impact on an accused’s right to a fair trial. Requiring an accused to cross-examine a witness before the trial has begun means they will be required to prepare and disclose their case in advance. This may provide the prosecution with further avenues for investigation and time to alter their case.

However, it is the Committee's view that the advantages in pre-recording a child's evidence outweigh these concerns. The Committee considers that pre-recording a child's evidence will improve the quality of the evidence obtained and, most importantly, protect vulnerable witnesses. The Committee makes no further comment.

5. Greater Sydney Commission Bill 2015

Date introduced	22 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon. Rob Stokes MP
Portfolio	Planning

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to constitute the Greater Sydney Commission (the Commission) as a NSW Government agency having functions relating to planning and development in the Greater Sydney Region.
2. In addition, the Bills is to provide for the constitution of Sydney planning panels for the Greater Sydney Region which will operate as joint regional planning panels under the *Environmental Planning and Assessment Act 1979* (the Planning Act).
3. Lastly, the Bill amends the Planning Act to authorise the Commission to make local environmental plans under that Act for the Greater Sydney Region and to establish a scheme for strategic planning the Greater Sydney Region and other regions declared by the Minister.

BACKGROUND

4. According the Minister, the Hon. Rob Stokes MP, Sydney is a city whose:

... scale demands a strategic and region-wide approach to planning, rather than having a disconnected morass of central government agencies working apart, and 41 councils of different sizes and capacities each planning in isolation from neighbouring councils.
5. In response, the Minister noted that this warrants the constitution of a dedicated, Sydney-specific, metropolitan governance authority.
6. The Minister referenced repeated attempts by civic leaders at establishing a coordinated agency, including a 1913 Royal Commission of inquiry to investigate the constitution of a greater Sydney. Subsequent Bills were introduced into Parliament in 1915, 1918, 1927 and 1931. This Bill is the final culmination in a century's attempts at establishing the architecture for the Greater Sydney Commission.

ISSUES CONSIDERED BY COMMITTEE

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

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

6. Fisheries Management Amendment Bill 2015

Date introduced	21 October 2015
House introduced	Legislative Council
Minister responsible	The Hon Niall Blair MLC
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Fisheries Management Act 1994 (the Act) as follows:
 - (a) to allow possession limits for fish to be imposed by order of the Minister (as an addition to the current scheme which allows possession limits to be imposed by regulation),
 - (b) to prohibit shark finning and related practices at sea,
 - (c) to allow approvals for taking and possession of fish for research and other purposes to be given by order of the Minister (as an addition to the current scheme which allows approvals to be given by permit),
 - (d) to permit determinations of total allowable fishing effort to be made (in addition to determinations of total allowable catch) and to make further provision for the allocation of total allowable catch and fishing effort,
 - (e) to permit the redefinition of a share management fishery, and other changes to be made to a share management fishery, with the majority support of shareholders in the fishery,
 - (f) to make further provision for the registration of dealings in shares in share management fisheries, including by providing for an online trading system,
 - (g) to make further miscellaneous changes to share management fisheries,
 - (h) to free-up the licensing scheme for fishing boats so that a fishing boat licence is only required for commercial fishing boat activities that are declared by the regulations to be activities for which a fishing boat licence is required,
 - (i) to enable the regulations to require certain commercial fishers to make real time reports about their fishing activities,
 - (j) to free-up the licensing scheme for charter fishing boats so that a charter fishing licence does not attach to a particular boat, but authorises the use of a single boat for any charter fishing activities, subject to any restrictions specified in the licence,

- (k) to make provision for the transfer of charter fishing licences and associated entitlements,
- (l) to establish a scientific observer program,
- (m) to enable the Minister to make orders that prohibit the entry into the State of anything that is or could be a declared disease, could be infected with a declared disease or could assist the spread of infection of a declared disease,
- (n) to enable the Minister to make orders requiring live abalone holders to implement specified measures to minimise the risk of transmission of a declared disease,
- (o) to make further provision for the protection of aquatic habitats,
- (p) to abolish the Management Advisory Committees for various fisheries and to instead permit the Secretary to establish advisory groups under the Act, and to permit advisory councils and groups established under the Act to be abolished by regulation,
- (q) to permit persons to appoint agents to use online facilities on their behalf under the Act and to permit service of notices electronically,
- (r) to make various other miscellaneous amendments.

BACKGROUND

2. As stated in the Second Reading Speech, the management of fisheries requires Government to balance a number of legitimate, but often competing, needs of stakeholders. This Bill contains a number of amendments aimed at benefiting the commercial, recreational, charter boat and Aboriginal fishing sectors. It also seeks to improve aquatic habitat and threatened species protection and strengthen biosecurity measures.
3. In 2012 the Government initiated an independent review of NSW Fisheries policy and this Bill puts in place the legislative changes agreed to by the Government in its response to the review.

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. Health Legislation Amendment Bill 2015

Date introduced	20 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

(a) To amend the Health Care Complaints Act 1993:

- i to require the Health Care Complaints Commission to keep a public register of prohibition orders and interim prohibition orders in respect of health practitioners, and
- ii to enable the Commission to issue public warnings during investigations into particular treatments of health services,

(b) To amend the *Mental Health Act 2007* to exclude from personal liability members of staff of the NSW Health Service who assist health care professionals or ambulance officers in the exercise of their functions,

(c) To amend the *Private Health Facilities Act 2007* to remove the adequacy of current health services in an area as a ground for the refusal of a license for a private health facility in that area,

(d) To amend the Public Health Act 2010:

- i to make it an offence for a subcontractor of a person who has been engaged to install, operate or maintain a regulated system for the control of legionella to fail to ensure that certain installation, operation or maintenance requirements are complied with, and
- ii to give effect to prescribed interstate prohibition orders within New South Wales,

(e) To amend the Public Health (Tobacco) Act 2008

- i to enable inspectors to seize and dispose of any tobacco product found on retail premises that exceeds a prescribed quantity and that is not in its original packaging or is in packaging without a health warning, and
- ii to prohibit obtaining or selling tobacco product by wholesale without a tobacco retailer notification number.

BACKGROUND

2. This Bill is part of the Government's regular review and monitoring of legislation to ensure that it remains up-to-date and relevant. The Bill contains a number of miscellaneous amendments to various health-related Acts.
3. These amendments have been prompted by various inquiries and reviews; including the 2014 Committee on the Health Care Complaints Commission's *Report on the Promotion of False and Misleading Health-related Information and Practices* and the 2014 Ministry of Health statutory review of the *Public Health (Tobacco) Act 2008*.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

4. Schedule 1[1] of the Bill proposes to insert a new provision at section 41E of the *Health Care Complaints Act 1993* to provide that the Commission is to keep a register containing copies of all prohibition orders and interim prohibition orders that are in force. Further, the Commission is to enable the contents of the register to be made available for inspection free of charge by the public on the Commission's website.
5. A prohibition or interim prohibition order can be made that prevents an unregistered health practitioner from providing health services for either a specified period or permanently, or place conditions on the health practitioner. These orders are made when, in the opinion of the Commissioner, the health practitioner poses a risk to the health or safety of members of the public.
6. At present, the Commissioner can issue public statements that warn the public about the practices of particular health service providers, and advise the public about restrictions and conditions placed on their practice. This is provided for under section 41A(2)(b) of the *Health Care Complaints Act 1993*.

The Committee notes that a searchable database of health service providers with prohibition orders placed on them may be considered an interference with their privacy by publicly 'naming and shaming' them for past errors.

However, the Committee also recognises the public policy objectives in protecting health consumers and providing the public with critical information about health service providers that are subject to various restrictions and conditions. In this respect, the register does not appear to be punitive against the practitioner in its intent, but cautionary for the public. The Committee also notes that provisions for similar warnings and public statements already exist under the *Health Care Complaints Act 1993*. The Committee makes no further comment.

8. Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Bill 2015

Date introduced	22 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Victor Dominello MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to amend the *Home Building Act 1989* to provide a register of residential premises containing loose-fill asbestos insulation (LFAI) and require warning signs to be displayed at premises that are included on the register,
 - (b) to amend the *Duties Act 1997* to provide a duty concession on a purchase of replacement residential property by owners of residential premises that are acquired by an authority of the State because they contain LFAI.

BACKGROUND

2. As stated in the Second Reading Speech, throughout the 1960s and 1970s loose-fill asbestos insulation was installed as ceiling insulation in residential premises in the Australian Capital Territory and New South Wales. The Australian Capital Territory has introduced measures to address the problem and this Bill seeks to do the same.

ISSUES CONSIDERED BY COMMITTEE

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

9. Prevention of Cruelty to Animals Amendment (Stock Animals) Bill 2015*

Date introduced	21 October 2015
House introduced	Legislative Council
Minister responsible	The Hon Mark Pearson MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to introduce the following requirements for the purposes of ensuring the humane treatment of stock animals:
 - (a) the proprietor of an abattoir or intensive livestock keeping facility is to install and maintain a fire sprinkler system in the abattoir or facility,
 - (b) the proprietor of an intensive livestock keeping facility is to install and maintain an alarm system in the facility,
 - (c) the proprietor of an abattoir or intensive livestock keeping facility is to ensure a video and audio recording of all operations relating to the keeping, movement, handling and slaughter of animals at the abattoir or facility is made and retained for a certain period.

BACKGROUND

2. In the Second Reading Speech, the Hon Mark Pearson MLC stated that up to seven million chickens and poultry, 900 000 pigs and chickens and tens of thousands of cattle are being kept in various stages of intensive housing. Mr Pearson commented that several incidents of animal suffering in these facilities, exposed by way of surveillance camera recordings, have prompted this Bill.

ISSUES CONSIDERED BY COMMITTEE

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

3. The Bill amends the *Prevention of Cruelty to Animals Act 1979* by inserting three new offences. They are:
 - that a proprietor of an abattoir or intensive livestock keeping facility must ensure a fire sprinkler system is installed and maintained in the abattoir or facility;
 - that a proprietor of an intensive livestock facility must ensure an alarm system is installed and maintained in the facility; and

- that a proprietor of an abattoir or intensive livestock keeping facility must ensure a video and audio recording is made of all operations relating to the keeping, movement, handling and slaughter of animals at the abattoir or intensive livestock keeping facility.
4. The maximum penalties for each of these offences is 250 penalty units (\$27 500) in the case of a corporation and 50 penalty units (\$5 500) or imprisonment for 6 months, or both, in the case of an individual.
 5. The Bill does not provide for any exceptions or defences for failure to comply with the provisions.

The Committee notes that the Bill introduces strict liability in relation to three proposed offences. The Committee will always comment where strict liability occurs as the Crown is not required to prove intent, negligence or recklessness on the part of the accused.

The Committee understands that in many cases, especially regulatory settings, strict liability is common and reasonable. Strict liability clauses are designed to ensure compliance with regulatory measures and usually involve small financial penalties for non-compliance.

However, in this particular case the Committee is concerned that a period of imprisonment applies in relation to the offences. As such, the Committee refers to Parliament whether these provisions trespass unduly on personal rights and liberties.

Privacy

6. The Bill requires mandatory video and audio recording of all operations relating to the keeping, movement, handling and slaughter of animals at an abattoir or intensive livestock keeping facility. All recordings must be kept for a period not less than 3 months and be available for inspection and copying by an inspector under the *Prevention of Cruelty to Animals Act 1979*.

The Committee notes the objectives of the Bill are to ensure the humane treatment of stock animals. However, the Committee also has concerns over the potential breach of privacy to owners and staff who are to be recorded at all times whilst at the place of their employment. The Committee makes no further comment.

10. Privacy and Personal Information Protection Amendment (Exemptions Consolidation) Bill 2015

Date introduced	22 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gabrielle Upton MP
Portfolio	Attorney General

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:

(a) to amend the Privacy and Personal Information Protection Act 1998:

- i to allow public sector agencies to disclose personal information to interstate persons or bodies or Commonwealth agencies for certain purposes, and to collect, use and disclose personal information for certain research purposes, based on existing exemptions applicable to health information under the Health Records and Information Privacy Act 2002, and
- ii to make it clear that the exemptions in the Act relating to law enforcement and related matters extend to law enforcement and related matters for the purposes of another State or a Territory or the Commonwealth, and
- iii to extend the meaning of investigative agency to include certain additional public sector agencies with investigative functions or that conduct an investigation on behalf of another public sector agency, and

(b) to amend the Privacy and Personal Information Protection Act 1998, certain other Acts and the Privacy Code of Practice (General) 2003 to consolidate and rationalise exemptions to the information protection principles under the Privacy and Personal Information Protection Act 1998 based on certain long term exemptions under public interest directions made by the Privacy Commissioner.

BACKGROUND

2. In her second reading speech to Parliament, the Hon Gabrielle Upton MP, Attorney General, stated that the Bill provides a statutory basis for a number of long-term exemptions that apply to obligations under the *Privacy and Personal Information Protection Act 1998*.
3. Under section 41 of the Act, the Privacy Commissioner, with the approval of the Attorney General, can make a written direction that a public sector agency is not required to comply with obligations under the Act where this is in the public interest.

Ms Upton told Parliament that public interest directions are intended to provide short-term exemptions until longer term solutions can be put in place.

4. The Bill provides a longer term solution by moving seven existing public interest directions into legislation or the Privacy Code of Practice (General). Ms Upton indicated that, in doing so, the Bill aims to preserve the status quo regarding the management of personal information by NSW public sector agencies in the areas in which the directions applied. Ms Upton further stated that the Bill will ensure NSW public sector agencies continue to be able to operate in the same way as when the directions were in place.
5. In addition to incorporating seven existing public interest directions into legislation or the Code, the Bill also aims to clarify the *Privacy and Personal Information Protection Act 1998* in relation to the disclosure of personal information across jurisdictional borders. Owing to a decision of the Administrative Appeals Tribunal, there are currently no limits on the transfer of personal information outside NSW. The Bill addresses this anomaly. It also replaces the existing Direction on Disclosures of Information by Public Sector Agencies for Research Purposes with a new statutory exemption consistent with an equivalent exemption in the *Health Records and Information Privacy Act 2002*.
6. Ms Upton confirmed that the Privacy Commissioner was consulted throughout the drafting process for the Bill and that the Privacy Commissioner has indicated that she is satisfied with the Bill and the amendments that it proposes.

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

7. The Bill amends legislation to provide for certain exemptions to the requirement to comply with the information protection principles under the *Privacy and Personal Information Protection Act 1998*. For example, proposed section 27A will provide an exemption to permit public sector agencies to exchange information to allow them to deal with correspondence from Ministers and members of Parliament. Similarly, proposed section 27C will provide an exemption to allow certain public sector agencies to share information with certain credit agencies about whether a person is or was a debtor under a default judgment.
8. In addition, schedule 1 of the Bill allows public sector agencies to disclose personal information to interstate persons or bodies or Commonwealth agencies for certain purposes. It also makes it clear that exemptions in the *Privacy and Personal Information Protection Act 1998* relating to law enforcement and related matters extend to law enforcement and related matters for the purposes of another State or Territory or the Commonwealth.

The Committee notes that the Bill authorises the exchange of personal information to the exclusion of the information protection principles under the *Privacy and Personal Information Protection Act 1998*. It thereby impacts on the privacy rights of individuals. However, the Committee notes that the Bill broadly preserves the status quo regarding the management of personal information by public sector agencies. The Committee further notes that the exemptions to privacy protection requirements have been drafted to apply in cases where the weight of public interest falls on the side of disclosure of

information; and that the Privacy Commissioner has been consulted and supports the Bill. In the circumstances, the Committee makes no further comment.

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

Commencement by proclamation

9. Clause 2 of the Bill provides for the proposed Act to commence on a day or days to be appointed by proclamation.

The Committee prefers Bills such as this one, which impact on individual rights, to commence on a fixed date, or on assent, and not by proclamation.

11. Regulatory Reform and Other Legislative Repeals Bill 2015; Occupational Licensing National Law Repeal bill 2015

Date introduced	21 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Victor Dominello MP
Portfolio	Innovation and Better Regulation

PURPOSE AND DESCRIPTION

1. The object of the *Regulatory Reform and Other Legislative Repeals Bill 2015* is to repeal a number of Acts as well as numerous provisions and schedules of other Acts.
2. In particular, the Bill abolishes the requirements for persons practising as property valuers in NSW to be registered, by repealing the *Valuers Act 2003*.
3. The Bill also repeals in the *Internal Audit Bureau Act 1992*, dissolves the Internal Audit Bureau on that repeal and facilitates the disposal of the Bureaus assets before it is dissolved.
4. The Bill also repeals the *West Scholarships Act 1930* and dissolves the trust administered under that Act.
5. Lastly, the Bill repeals certain other Acts that for policy reasons are no longer required, repeals certain other Acts and provisions for the purposes of statute law revision, and makes amendments to various Acts and instruments consequent on the proposed repeals.
6. Meanwhile, the *Occupational Licensing National Law Repeal Bill 2015* is to terminate the involvement of NSW in a scheme to replace State and Territory based licensing arrangements with a national occupational licensing scheme, initially for air-conditioning and refrigeration, electrical, plumbing, gasfitting and property-related occupations.
7. The Bill repeals the *Occupational Licensing (Adoption of National Law) Act 2010* and dissolves the national entities that have been established under the Occupational Licensing National Law.
8. The Bill gives effect in NSW to the decision of the Council of Australian Governments to terminate the national occupational licensing reform in favour of jurisdictions minimising licensing impediments to labour mobility. For that purpose, the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014* has been enacted in NSW to provide for the automatic mutual recognition of certain occupational licenses

issues in other jurisdictions that an individual who holds a recognised license from another jurisdiction is taken to hold the equivalent NSW license.

BACKGROUND

9. The *Regulatory Reform and Other Legislative Repeals Bill 2015* forms part of the Government's periodic efforts to rescind unnecessary and obsolete legislation as part of its broader goal to remove red tape.
10. Meanwhile, the *Occupational Licensing National Law Repeal Bill 2015* gives effect in New South Wales to the decision of the Council of Australian Governments to terminate the national occupational licensing reform in favour of jurisdictions minimising licensing impediments to labour mobility.

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*.

12. Retail Trading Amendment Bill 2015

Date introduced	21 October 2015
House introduced	Legislative Council
Minister responsible	The Hon Duncan Gay MLC
Portfolio	Roads, Maritime and Freight

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to allow a shop or bank to be open on Boxing Day provided that the shop or bank is staffed only by persons who have freely elected to work on Boxing Day, and
 - (b) to allow a shop to receive, unpack and prepare goods for sale on any restricted trading day provided that the shop is staffed only by persons who have freely elected to work on that day, and
 - (c) to allow a bank to be open on the Bank Holiday (the first Monday in August) and on other public holidays (other than on Good Friday, Easter Sunday, before 1 pm on Anzac Day and on Christmas Day), provided that the bank is staffed only by persons who have freely elected to work on that day, without obtaining approval under the *Retail Trading Act 2008* (the **principal Act**).

BACKGROUND

2. In the Second Reading Speech, the Minister commented that restrictions to retail trading laws have gradually changed over time to provide more certainty and choice for consumers, retailers and employees. The Minister stressed that the Bill does not change the status of Boxing Day as a Public Holiday and employees retain their rights under the Commonwealth Fair Work Act and relevant awards and agreements.
3. The Minister added that the Government will provide additional resources to NSW Industrial Relations to investigate any complaint made in regard to an employee being forced to work or a shop being forced to open.

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*.

13. Statute Law (Miscellaneous Provisions) Bill (No 2) 2015

Date introduced	21 October 2015
House introduced	Legislative Council
Minister responsible	The Hon John Ajaka MLC
Portfolio	Ageing, Disability Services, Multiculturalism

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to make minor amendments to various Acts (Schedule 1), and
 - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedule 2), and
 - (c) to make minor amendments to various Acts and instruments consequent on the enactment of the *Government Sector Employment Act 2013* (Schedule 3), and
 - (d) to make other provisions of a consequential or ancillary nature (Schedule 4).

BACKGROUND

2. In the Second Reading Speech to Parliament, the Hon David Clarke MLC, on behalf of the Hon John Ajaka MLC commented that the Bill continues the statute law revision program that has been in place for more than 30 years. Mr Clarke indicated that Bills of this kind have featured in most sessions of Parliament since 1984 and are an effective way of making minor policy changes by amending various Acts, repealing redundant legislation and correcting drafting errors.

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*.

14. Treasury Corporation Amendment Bill 2015; Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015; State Insurance and Care Governance Amendment (Investment Management) Bill 2015

Date introduced	20 October 2015
House introduced	Legislative Assembly
Minister responsible	The Hon Gladys Berejiklian MP
Portfolio	Treasury

PURPOSE AND DESCRIPTION

Treasury Corporation Amendment Bill 2015

1. The object of this Bill is to amend the *Treasury Corporation Act 1983* to support the conferral under other legislation of functions on the Treasury Corporation in relation to the management and investment of funds established under that legislation.
2. The Bill amends the *Treasury Corporation Act 1983* as follows:
 - (a) to enable the Treasurer (instead of the Governor acting on the advice of the Treasurer) to appoint persons as directors of the Board and as the Chief Executive of the Treasury Corporation (Schedule 1 [1]—proposed section 4A (2) and Schedule 1 [2]),
 - (b) to enable up to 2 additional persons to be appointed as directors (Schedule 1 [1]—proposed section 4A (2) (d)),
 - (c) to enable a person other than the Secretary of the Treasury to be appointed as Chairperson of the Board (Schedule 1 [1]—proposed section 4A (3) and (3A)),
 - (d) to enable the Board to delegate to committees (which may include persons other than directors of the Board) functions of the Board (Schedule 1 [3]),
 - (e) to require the Treasury Corporation to comply with any prudential standards or reporting or auditing requirements that the Minister declares to be applicable to the Treasury Corporation by order published in the Gazette (Schedule 1 [4]),
 - (f) to make consequential provisions and preserve existing appointments of persons as directors and the Chief Executive (Schedule 1 [5]–[13]).

TREASURY CORPORATION AMENDMENT BILL 2015; SUPERANNUATION ADMINISTRATION AMENDMENT (INVESTMENT MANAGEMENT AND OTHER MATTERS) BILL 2015; STATE INSURANCE AND CARE GOVERNANCE AMENDMENT (INVESTMENT MANAGEMENT) BILL 2015

Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015

3. The object of this Bill is to amend the *Superannuation Administration Act 1996* to make provision with respect to the investment management of the public sector superannuation schemes under that Act (**STC funds** or **STC schemes**) and the fiduciary and other obligations and powers of the SAS Trustee Corporation (**STC**), which administers those schemes.
4. The amendments made by this Bill:
 - (a) authorise the Treasurer to require STC to appoint an investment manager approved by the Treasurer (a **mandated investment manager**) to provide investment management services in relation to an STC fund subject to any terms and conditions determined by the Treasurer and consistently with STC's investment strategies, reserves strategy and custodial policies for the STC fund, and
 - (b) clarify that a mandated or other investment manager appointed by STC may engage other investment managers to provide the relevant investment management services, and
 - (c) enable the Minister to declare prudential standards, or reporting and auditing requirements, and to require STC to comply with them, and
 - (d) enable, at the request of STC, the transfer of accumulation-style components of benefits under a STC scheme to a successor fund.

State Insurance and Care Governance Amendment (Investment Management) Bill 2015

5. The object of this Bill is to amend the *State Insurance and Care Governance Act 2015* (the **Principal Act**) to make provision with respect to investment and management of certain workers compensation, motor accidents and sporting injuries scheme funds.
6. The amendments made by this Bill:
 - (a) provide for the Treasurer (with the approval of the Minister administering the legislation establishing the scheme funds) to order the authority responsible for the administration of a scheme fund to appoint an investment manager approved by the Treasurer to provide investment management services in relation to the fund subject to any terms and conditions specified in the order and consistently with the investment strategies determined by Insurance and Care NSW (**ICNSW**), and
 - (b) enable the Minister to declare prudential standards, or reporting and auditing requirements, in relation to scheme funds and to require ICNSW and the authorities responsible for the administration of the scheme funds to comply with them.

BACKGROUND

7. Although they are separate Acts when operative, the *Treasury Corporation Amendment Bill 2015*, the *Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015* and the *State Insurance and Care Governance Amendment (Investment Management) Bill 2015* are cognate Bills. Therefore, all three Bills have been considered in one report.

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ISSUES CONSIDERED BY COMMITTEE

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

Commencement by proclamation

8. The *Superannuation Administration Amendment (Investment Management and Other Matters) Bill 2015* and the *State Insurance and Care Governance Amendment (Investment Management) Bill 2015* both commence on a day or days to be appointed by proclamation.

The Committee prefers legislation to commence on assent or a fixed date. However, these Bills implement extensive changes to the State's key funds management activities and as such the Committee considers flexibility as to their commencement may be required.

Appendix One – 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,

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- 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.