PARLIAMENT OF NEW SOUTH WALES

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”.

Contents

Membership

CHAIR	Mr Stephen Bromhead MP, Member for Myall Lakes
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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 2014; APPROPRIATION (PARLIAMENT) BILL 2014; APPROPRIATION (BUDGET VARIATIONS) BILL 2014; STATE REVENUE AND OTHER LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2014;

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

2. COURTS LEGISLATION AMENDMENT (BROADCASTING JUDGEMENTS) BILL 2014

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

3. ELECTORAL AND LOBBYING LEGISLATION AMENDMENT (ELECTORAL COMMISSION) BILL 2014

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

Rights against defamation

The Committee is concerned that without appropriate safeguards to ensure against a false or inaccurate inclusion on the Lobbyists Watch List, the inability to bring proceedings for defamation may result in a trespass on individual rights and liberties. The Committee refers this matter to Parliament for its further consideration.

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

Ill and widely-defined powers

The Committee notes the Electoral Commission may refuse to register an applicant on the Lobbyists Register if it deems that the individual is not a 'fit and proper person'. The Committee notes the ill and widely-defined powers conferred to the Electoral Commission in being able to make these decisions. The Committee makes no further comment.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Lack of appeal rights

The Committee notes the lack of enumerated appeal rights to have inclusions on the Lobbyists Watch List reviewed by an external review body. The Committee refers this matter to Parliament for its further consideration.

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

Commencement by proclamation

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.

4. PASSENGER TRANSPORT BILL 2014

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

Personal physical integrity

Random drug and alcohol testing, particularly where that testing may include taking samples of a person's blood, urine or other body tissues or fluids, could impact on an individual's right to personal physical integrity. However, the Committee notes the safety objectives of carrying out testing in these circumstances and also that such testing is already carried out under the current Act. Any regulations which are made with respect to drug and alcohol testing can also be subject to disallowance by Parliament under relevant provisions of the *Subordinate Legislation Act 1989*. The Committee therefore makes no further comment.

Entry onto property without consent or a warrant

Entering property without the owner or occupier's consent or without a warrant could impact on an individual's property rights. However, there is a similar provision in the existing Act. The Committee also notes the safety objectives of the proposed provision and that before entering premises in these circumstances; an investigator must take reasonable steps to give the occupier notice of their rights and obligations. The Committee makes no further comment.

The Committee notes that Schedule 1 clause 29 of the Bill could impact on an individual's right against self-incrimination particularly given that certain information provided in relation to investigations can be admissible as evidence against an individual in criminal proceedings for offences against clause 160 of the Bill. The Committee makes no further comment.

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

Regulations may create offences punishable by imprisonment

The Bill permits the regulations to create offences with significant penalties of up to 9 months imprisonment. However, the Committee notes that the existing regulation already contains drug and alcohol related offences which carry penalties of up to 9 months imprisonment. The Committee also acknowledges that any regulation prepared will need to be tabled in Parliament and is subject to disallowance. The Committee therefore makes no further comment.

Commencement by proclamation

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.

5. ROAD TRANSPORT AMENDMENT (MANDATORY ALCOHOL INTERLOCK PROGRAM) BILL 2014

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

Mandatory Minimum Sentences

The Committee is concerned whenever mandatory minimum sentences are included in legislation. Unlike courts, the Parliament cannot consider the individual circumstances of each case before deciding upon an appropriate penalty. Mandatory minimum sentences may lead to an unjust penalty disproportionate to the seriousness of the offence committed. The Committee makes no further comment.

Zero Blood Alcohol Requirement

The Committee notes that interlock licence holders are subject to a zero blood alcohol requirement under the Bill. There is no level of tolerance, such as a 0.02 concentration, to account for 'false positives' where alcohol is present in the blood but none has been consumed (e.g. where a person has used mouthwash). In such instances driving ability would not be affected but an interlock licence holder would be unable to use his/her vehicle. Nonetheless, the Bill aims to completely separate drinking and driving in persons who have been convicted of drink driving offences. A small tolerance such as 0.02 may undermine this goal. The Committee makes no further comment.

Effect on Third Parties

The Committee notes the effect of the Bill's mandatory alcohol interlock orders on people other than the offender who use the vehicle fitted with the interlock device, especially registered owners. Such people will be required to comply with a zero blood alcohol requirement to be able to use their vehicle regardless of the type of driving licence they hold. The court has no discretion to impose an alternative penalty in such situations. This results in the punishment of people who have committed no offence. The Committee makes no further comment.

Inconsistent Sentencing

The Committee notes that a person who cannot afford the cost of installing or maintaining an approved interlock device may be disadvantaged by the Bill and disqualified from driving for 5 years where more affluent people convicted of the same offence would be disqualified from driving for a much shorter period because they can afford an interlock device. While the Second Reading Speech to the Bill indicates a financial assistance scheme exists which includes subsidies for eligible concession card holders and others in extreme financial hardship, it is unclear whether this will cover all those in need. The Committee makes no further comment.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions

Non-reviewable Decision

It is not clear whether the decision to refuse to issue a licence, without an interlock condition attached, to a person who has completed the required interlock period is judicially reviewable. Nonetheless, such a decision would not prevent the person from driving, only from driving without an interlock device fitted to his/her vehicle. Given this, and the fact these provisions apply to people convicted of alcohol-related driving offences who, in the opinion of RMS, have not sufficiently addressed their alcohol-related issues; and the Bill's aim to promote behavioural change through the separation of drinking and driving, the Committee makes no further comment.

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

Commencement by Proclamation

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.

6. ST SHENOUDA COPTIC ORTHODOX MONASTERY (NSW) PROPERTY TRUST BILL 2014*

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

7. WATER INDUSTRY CORPORATION AMENDMENT (REVIEW) BILL 2014

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

Double Punishment

The Committee notes that the Bill provides that a regulatory authority may impose administrative penalties for statutory defaults, notwithstanding that a penalty may have already been imposed for the same default as a result of criminal proceedings. The Committee notes that this could amount to a double punishment for fundamentally the same statutory default. The Committee makes no further comment.

Privacy

The Committee notes the partial exemptions to the *Privacy and Personal Information Protection Act 1998* provided under this Bill. However, given the circumstances where a retailer 'of last resort' needs to facilitate water supply and sewerage services to existing customers of failed suppliers, the Committee does not consider these exemptions to be unreasonable in the circumstances.

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

Commencement by Proclamation

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.x

PART TWO – REGULATIONS

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

Part One - Bills

1. Appropriation Bill 2014; Appropriation (Parliament) Bill 2014; Appropriation (Budget Variations) Bill 2014; State Revenue and Other Legislation Amendment (Budget Measures) Bill 2014;

Date introduced	17 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Treasurer

PURPOSE AND DESCRIPTION

Appropriation Bill 2014

1. The object of this Bill is to appropriate from the Consolidated Fund various sums of money required during the 2014-2015 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. The Bill for the 2014-2015 financial year 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.

3. The Bill for the 2014 – 2015 financial year contains provision for transfer payments from the Commonwealth to non-Government schools and local government.

4. Lastly, the Bill provides for the appropriation for the whole of the 2014-2015 financial year.

Appropriation (Parliament) Bill 2014

5. The overview of this Bill is to appropriate out of the Consolidated Fund sums of money required during the 2014-2015 financial year for recurrent services and capital works and services of the Legislature.

Appropriation (Budget Variations) Bill 2014

6. The objects of this ill are to set out the recurrent services and capital work and services for which the "Advance to the Treasurer" appropriation was expended in the 2012-2013 financial year, to appropriate $40,397,000 from the Consolidated Fund for recurrent services and capital works and services and to make the necessary adjustment to the "Advance to the Treasurer appropriation for that year.

7. To appropriate $21,450,000 from the Consolidated Fund for recurrent services and capital works and services that were required by the exigencies of Government in accordance with section 22(1) of the *Public Finance and Audit Act 1983* in relation to the 2012-2013 financial year.

State Revenue and Other Legislation Amendment (Budget Measures) Bill 2014

8. The objects of this Bill are as follows:

   (a) To establish 1 July 2016 as the date for the abolition of the following duties:

      a. Duty of transfers of marketable securities and commercial fishery shares;

      b. Duty on transfers of business assets;

      c. Duty on transfers of statutory licenses or permissions and gaming machine entitlements;

      d. Mortgage duty;

   (b) To amend the *First Home Owner Grant (New Homes) Act 2000* to increase the first home owner grant cap from $650,000 to $750,000.

   (c) To repeal the *Payroll Tax Rebate Scheme (Disability Employment) Act 2011*

   (d) To permit royalties under the *Mining Act 1992 , Offshore Minerals Act 1999, Petroleum (Offshore) Act 1982* and *Petroleum (Onshore) Act 1991* to be assessed and recovered by the Chief Commissioner of State Revenue as taxes under the *Taxation Administration Act 1996*.

   (e) To confirm and remake the provisions of the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.*

BACKGROUND

9. These Bills give legislative effect to the 2014-2015 Budget.

10. Although they will be separate Acts when they become operative, the Appropriations Bill 2014, the Appropriation (Parliament) Bill 2014, The Appropriations (Budget Variations) Bill 2014, and the State Revenue and Other Legislation Amendment (Budget Measures) Bill 2014 are cognate Bills. Therefore, all three Bills have been considered in one report.

OUTLINE OF PROVISIONS

Appropriation Bill 2014

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

12. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

13. Clause 3 interprets a reference to the financial year to which the proposed Act relates.

14. Clause 4 is an interpretive provision relating to expenses and capital expenditure information included in the proposed Act.

15. Part 2 (clauses 5–17) provides for the appropriations for the recurrent services and capital works and services of the specified departments for the financial year of 2014–15. The amounts appropriated are:

    (a) $50,891,952,000 for recurrent services, and

    (b) $5,563,281,000 for capital works and services

16. Part 3 (clauses 18 and 19) makes an additional appropriation of $267,100,000 to the Minister for Health and Minister for Medical Research, with this being part of the revenue raised from gaming machine taxes.

17. Part 4 (clauses 20–30) provides for the appropriations for the recurrent services and capital works and services of the specified offices for the financial year of 2014–15. The amounts appropriated are:

    (a) $330,432,000 for recurrent services, and

    (b) $19,190,000 for capital works and services

18. 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.

19. Clause 31 provides for transfer payments of $3,563,100,000 from the Commonwealth to non-Government schools and local government.

20. 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.

21. Clause 34 allows the Treasurer to apply an appropriation differently in the event that responsibility for a service or function is transferred.

22. 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 2014

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

24. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

25. Clause 3 provides for the interpretation of a reference to the financial year to which the proposed Act relates and other matters of interpretation.

26. Clause 4 is an interpretative provision relating to expenses and capital expenditure information included in the proposed Act.

27. Clause 5 provides for the appropriation out of the Consolidated Fund, for the recurrent services of the Legislature for the financial year of 2014–15, of the amount of $123,233,000.

28. 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 2014–15, of the amount of $22,650,000.

Appropriation (Budget Variations) Bill 2014

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

30. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

31. Clause 3 interprets a reference in the proposed Act.

32. Clause 4 appropriates $40,397,000 for (and reports the details of) the recurrent services and capital works and services for which the Advance to the Treasurer for the 2012–13 financial year was expended, as set out in Column 1 of Schedule 1. Accordingly, the amount appropriated for the Advance to the Treasurer for that year (originally $285,000,000) is reduced by the amount appropriated by the clause.

33. Clause 5 appropriates the additional amounts for recurrent services and capital works and services under section 22 (1) of the *Public Finance and Audit Act 1983*, the details of which are set out in Column 2 of Schedule 1. As these amounts are appropriated by the proposed Act, subclause (2) removes the requirement of the *Public Finance and Audit Act 1983* that details of them be included in the Appropriation Act for the 2013–14 financial year.

34. Clause 6 makes it clear that the sums appropriated by the proposed Act are in addition to any other sums appropriated in respect of the 2012–13 financial year, subject to the adjustment of the amount appropriated for the Advance to the Treasurer for that year, under clause 4.

35. Clause 7 contains miscellaneous provisions concerning the operation of the proposed Act. Subclause (1) provides that the proposed Act is to be construed as part of the annual Appropriation Act or Acts. (This emphasises that the appropriations are part of the budgetary process for the 2012–13 financial year and ensures that terms are construed consistently.) Subclause (1) also makes it clear that the appropriations are not limited to meeting shortfalls from other appropriations.

Subclause (2) validates any payment of the appropriated sums before the date of assent to the proposed Act. Subclause (2) also provides that the proposed subsection applies despite the proposed Act being assented to after the 2012–13 financial year. (This removes an argument, based on section 23 of the *Public Finance and Audit Act 1983*, that the appropriation lapses at the close of the financial year.)

36. Clause 8 validates, to the extent (if any) to which it may be necessary to do so, the expenditure, before the date of assent to the proposed Act, of any sum to which the proposed Act applies and the approval of that expenditure.

37. Clause 9 makes it clear that a reference to an agency specified in Schedule 1 to the proposed Act includes any predecessor of the agency that was responsible for the recurrent services, or capital works and services, specified in relation to the agency in Schedule 1 in the financial year concerned. This provision is included because names of Departments and other agencies may have changed during the financial year concerned because of administrative changes.

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

39. Clause 2 provides for the commencement of the proposed Act.

40. Clause 3 provides that explanatory notes in the Schedules do not form part of the proposed Act.

41. Clause 4 provides for the automatic repeal of the proposed Act after its commencement.

42. Schedules 1–5 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

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

2. Courts Legislation Amendment (Broadcasting Judgements) Bill 2014

Date introduced	18 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Attorney General and Justice

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *District Court Act 1973* and the *Supreme Court Act 1970* to require the District Court and Supreme Court to permit the recording and broadcast of certain judgments given by those Courts in open court unless satisfied that one of a limited number of exclusionary grounds is present.

BACKGROUND

2. Court proceedings are generally heard in open and the public are able to attend in person, with more than 170,000 criminal matters dealt by the courts each year.

3. New South Wales courts have allowed sentencing remarks to be broadcast previously, with four high-profile sentences filmed since 2009 and three documentaries made since 2004. However, there are currently no guidelines with respect to ensuring consistency in deciding whether to allow cameras into courts.

4. Both the current and former Attorneys General have expressed a view that there be a presumption that sentencing proceedings be publicly accessible, to enable the public to see what considerations are taken into account when judges make decisions. In this respect, it means that judgements should be broadcast if such a request is sought. This Bill seeks to establish the guidelines that judges must take into account when deciding whether broadcast their verdicts, sentencing remarks, and civil judgements.

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.

7. Schedule 1 Amendment of District Court Act 1973 No 9

8. Schedule 1 amends the District Court Act 1973 to insert a new Part in that Act dealing with the recording and broadcast of certain judgments of the District Court. The new Part provides for the following matters:

   Proposed section 177 excludes certain kinds of proceedings in the Court from the application of the new Part. These include proceedings held in closed court, bail proceedings, certain appeals involving children and young persons and certain

proceedings concerning forensic procedures the proposed section also enables the Governor to make regulations to exclude other classes of proceedings.

9. The new Part only relates to the recording and broadcast of judgment remarks of the District Court. Proposed section 178 defines judgment remarks of the Court to mean:

(a) in relation to a criminal trial—the delivery of the verdict, and any remarks made by the Court when sentencing the accused person, that are delivered or made in open court, and

(b) in relation to any other proceedings—any remarks made by the Court in open court when announcing the judgment determining the proceedings.

10. Proposed section 178 also defines certain other terms used in the new Part.

11. Proposed section 179 enables a person to apply to the District Court in proceedings to which the new Part applies for the Court to permit the recording and broadcast of judgment remarks of the Court that are made in those proceedings.

The District Court will be required to grant permission for one or more news media organisations (whether or not the organisations are also the applicants) to broadcast the judgment remarks unless it is satisfied that one of the exclusionary grounds specified in the proposed section is present.

The following are the exclusionary grounds:

(a) that the broadcast of the judgment remarks would be likely to reveal the identity of a person in circumstances where the disclosure, publication or broadcast of the person's identity is prohibited by a suppression or non-publication order of the District Court or by law,

(b) that the judgment remarks will contain material:

(i) that is subject to a suppression or non-publication order by the District Court or the disclosure, publication or broadcast of which is otherwise prohibited by law, or

(ii) that is likely to be prejudicial to other criminal proceedings (including proceedings for the same or a related criminal offence) or a current criminal investigation, or

(iii) that is likely to reveal the existence of a covert operation carried out by law enforcement officials,

(c) that the broadcast of the judgment remarks would pose a significant risk to the safety and security of any person in the courtroom or who has participated, or has otherwise been involved, in the proceedings,

(d) that the Chief Judge of the District Court has directed that the judgment remarks not be recorded or broadcast because, in the Chief Judge's opinion, the broadcast of the judgment remarks would be detrimental to the orderly administration of the Court.

The presence of exclusionary ground (a), (b) or (c) will not be sufficient justification to refuse permission unless the District Court is also satisfied that it is not reasonably practicable to implement measures when recording or broadcasting the judgment remarks to prevent the broadcast of any thing that gives rise to the exclusionary ground.

12. Proposed section 179 also makes it clear that nothing in the proposed section is intended to limit:

(a) the circumstances in which the District Court may decide to permit the recording or broadcast of judgment remarks of the Court, or

(b) the persons (in addition to news media organisations) to whom the District Court may decide to grant permission to record or broadcast judgment remarks of the Court. Protections for accused persons, victims and their families

13. Proposed section 179 provides that images that identify any of the following persons must not be recorded in connection with the recording or broadcast of judgment remarks of the District Court:

(a) the jurors in proceedings where the Court is sitting with a jury,

(b) an accused person or a victim in a criminal trial (or a member of the accused person's or victim's immediate family),

(c) any other person belonging to a class of persons the recording of images of whom is prohibited by regulations made by the Governor.

14. Proposed section 179 also enables the District Court to make orders (on application or of its own motion) for the purpose of preventing the recording or broadcast of such images or the recording or broadcast of any thing that gives rise to an exclusionary ground.

15. Proposed section 179 enables the rules of the District Court to make provision for regulating the manner in which recordings of judgment remarks of the Court for broadcasts permitted by the Court are made, including:

(a) the jurors in proceedings where the Court is sitting with a jury,

(b) an accused person or a victim in a criminal trial (or a member of the accused person's or victim's immediate family),

(c) any other person belonging to a class of persons the recording of images of whom is prohibited by regulations made by the Governor.

(d) limiting the number and kinds of persons who may be involved in making such recordings in the courtroom,

(e) and providing for measures to prevent the recording or broadcast of any thing that may give rise to an exclusionary ground or prevent a contravention of the requirement for images of certain persons not to be recorded, and

(f) providing for the shared use of recordings among broadcasters.

16. However, sections 161 and 171 of the District Court Act 1973 will operate to prevent the rules from making provision for other matters in a manner that is inconsistent with proposed section 179. For example, rules that create additional grounds of exclusion to those specified by the proposed section, or that limit the application of those grounds, would be inconsistent with the proposed section.

17. Schedule 2 makes a corresponding amendment to the Supreme Court Act 1970 with respect to the recording and broadcast of judgment remarks of the Supreme Court. In addition to provisions that correspond to those to be inserted in the District Court Act 1973, Schedule 2 also makes provision for the following matters in the new Part inserted in the Supreme Court:

(a) the new Part also excludes proceedings in exercise of the parens patriae jurisdiction of the Court or under the Crimes (High Risk Offenders) Act 2006,

(b) the new Part extends to proceedings in the Court of Criminal Appeal as well as to proceedings in the Supreme Court (which includes the Court of Appeal by virtue of section 38 of the Supreme Court Act 1970).

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. Electoral and Lobbying Legislation Amendment (Electoral Commission) Bill 2014

Date introduced	17 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Mike Baird MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to reconstitute the New South Wales Electoral Commission (so that it is constituted by the Electoral Commissioner, a former Judge as Chairperson of the Commission and a member with financial or audit skills, instead of it being constituted only by the Electoral Commissioner).

2. The Bill also abolishes the Election Funding Authority of New South Wales and confers its functions on the reconstituted New South Wales Electoral Commission.

3. Lastly, the Bill provides for a Register of Third-party Lobbyists, a Lobbyists Watch List and Code of Conduct for third-party and other lobbyists, and to confer on the New South Wales Electoral Commission the function of keeping the Register and Watch List, and of enforcing compliance with the Code.

BACKGROUND

4. This Bill has two key components. Firstly, it seeks to establish new institutional arrangements for the oversight of elections and election funding matters, in particular by establishing a new Electoral Commission for New South Wales. Secondly, it seeks to strengthen the regulation of third party and other lobbyists, and confer functions in relation to the regulation of lobbyists on the independent Electoral Commission.

5. In line with recommendations made by the Joint Standing Committee on Electoral Matters in its 2013 review of the electoral legislation, this Bill seeks to abolish the Election Funding Authority and create a new, separately constituted Electoral Commission which combines the functions of the current Commission and the Election Funding Authority.

6. In line with a separate recommendation made by the Independent Commission Against Corruption in its 2013 report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources" a recommendation was made to implement an earlier recommendation of the ICAC to provide a legislative basis for the regulation of lobbying and to appoint an independent body to maintain and monitor register of lobbyists, and to impose sanctions for breaches.

7. This Bill passed Parliament on 18 June 2014 and was assented to on 24 June 2014.

OUTLINE OF PROVISIONS

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

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

10. Schedule 1 [1] substitutes Division 1 of Part 3A of the Act to reconstitute the New South Wales Electoral Commission.

11. The Electoral Commission will consist of:

    (a) a former Judge appointed by the Governor as the Chairperson of the Commission, and

    (b) a person appointed by the Governor who is to have financial or audit skills and qualifications relevant to the functions of the Commission, and

    (c) the Electoral Commissioner.

12. The functions of the Electoral Commission will include:

    (a) the provision of assistance for the conduct of elections by the Electoral Commissioner, and

    (b) functions under the *Election Funding, Expenditure and Disclosures Act 1981* (which are currently exercised by the Election Funding Authority), including functions relating to:

        (i) the administration of the election funding, expenditure and disclosure scheme under that Act, and

        (ii) the registration of electoral participants, and

    (c) functions under the *Lobbying of Government Officials Act 2011* (conferred by the amendments made by Schedule 3 to the Bill), including functions relating to:

        (i) the keeping of the Register of Third-Party Lobbyists and the Lobbyists Watch List, and

        (ii) enforcing compliance with the Lobbyists Code and that Act, and

    (d) the institution of proceedings for offences against the Act, the Election Funding, Expenditure and Disclosures Act 1981 or the Lobbying of Government Officials Act 2011, and

    (e) the conduct and promotion of research into electoral matters and other matters that relate to its functions, and the publication of the results of that research, and

    (f) the promotion of public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs.

13. The Electoral Commission is not subject to the direction or control of the Minister in the exercise of its functions. It is the duty of the Electoral Commission to exercise its functions in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons or bodies.

14. The functions under the Act of conducting elections will remain with the Electoral Commissioner.

15. Schedule 1 [2] and [3] amend section 21AB to provide the same grounds of ineligibility for appointment as the Electoral Commissioner as are proposed under Schedule 1 [5] for appointment as other members of the Electoral Commission.

16. Schedule 1 [4] inserts proposed section 184A into the Act to enable the Electoral Commission, for the purpose of enforcing compliance with the Act, to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981* for the purpose of enforcing compliance with that Act.

17. Schedule 1 [5] inserts proposed Schedule 21A into the Act. The Schedule contains provisions relating to the members and procedure of the Electoral Commission, including the following:

    (a) eligibility for appointment as a member of the Commission,

    (b) the term of office of appointed members,

    (c) the appointment of deputies of appointed members,

    (d) the remuneration of appointed members and deputies,

    (e) vacancies in office of appointed members and deputies,

    (f) suspension and removal from office by Parliament.

18. Schedule 2 [4] inserts proposed section 4A to set out the objects of the Act. The objects are as follows:

    (a) to establish a fair and transparent election funding, expenditure and disclosure scheme,

    (b) to facilitate public awareness of political donations,

    (c) to help prevent corruption and undue influence in the government of the State,

    (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,

    (e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

19. Schedule 2 [1]–[3] and [5]–[14] make consequential amendments to the Act relating to the abolition of the Election Funding Authority and its replacement by the Electoral Commission. In exercising its functions, the Electoral Commission is to have regard to the objects of the Act.

20. Schedule 2 [15] amends Schedule 2 to make savings, transitional and other provisions consequent on the enactment of the proposed Act. Under the provisions, the Election Funding Authority is formally abolished and its assets, rights and liabilities transferred to the Electoral Commission.

21. Schedule 3 [1] and [2] revise the definitions of terms and expressions used in the Act. In particular:

    (a) a *third-party lobbyist* (to whom the Act is currently limited) is defined as an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body,

    (b) a *lobbyist* is defined as a third-party lobbyist or any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist),

    (c) *lobbying* is defined (with relevant exceptions) as communicating with Government officials on designated official matters for the purpose of representing the interests of others (so as to extend to lobbying whether or not as part of a lobbying business, lobbying for the purpose of representing the interests of an organisation for which the person works, lobbying for the purpose of representing community interests and lobbying of a kind prescribed by the regulations).

22. Schedule 3 [3] inserts proposed Part 2 into the Act in relation to the Lobbyists Code of Conduct. The Code is to be prescribed by the regulations and is to set out the ethical standards of conduct to be observed by third-party and other lobbyists when lobbying Government officials in order to promote transparency, integrity and honesty.

23. Schedule 3 [3] also inserts proposed Parts 3 and 4 into the Act in relation to the Register of Third-Party Lobbyists and the Lobbyists Watch List. Third-party lobbyists (and individuals engaged to lobby for third-party lobbyists) are required to be registered on application to the Electoral Commission (with information required to be included in the Register relating to their clients and to persons having a management, financial or other interest in the business of the lobbyist). The Electoral Commission is also required to maintain a Lobbyists Watch List that contains the names of lobbyists that the Commission considers should be on the Watch List because they have contravened the Lobbyists Code of Conduct or the Act. Under codes and official rules applying to Government officials, special procedures may apply to communications with persons on the Watch List and communications with unregistered lobbyists may be precluded. The Register and the Watch List are to be published on a website maintained by the Electoral Commission.

24. Schedule 3 [7] inserts proposed section 19 into the Act to confer on the Electoral Commission the function of enforcing compliance by lobbyists with the Lobbyists Code

of Conduct and the Act, and for that purpose to enable the Commission to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981*. Schedule 3 [7] also inserts proposed section 20 to protect the Electoral Commission and others from liability in defamation or breach of confidence in connection with the exercise in good faith of the functions of the Commission.

25. Schedule 3 [4], [5] and [6] renumber existing Parts and sections of the Act as a consequence of the insertion of new Parts 2, 3 and 4 and make other consequential amendments.

26. Schedule 3 [8]–[10] amend Schedule 1 to make savings, transitional and other provisions consequent on the enactment of the provisions relating to the Register of Third-Party Lobbyists, the Lobbyists Watch List and the Lobbyists Code. In particular, the existing administrative Register of Lobbyists maintained by the Secretary of the Department of Premier and Cabinet is to be carried over to the Register established by the new Part 3 of the Act.

27. Schedule 4 makes consequential amendments to various Acts and regulations consequent on the proposed replacement of the Election Funding Authority with the Electoral Commission.

ISSUES CONSIDERED BY COMMITTEE

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

Rights against defamation

28. Schedule 3 [7] at proposed section 20 provides that if the name of a person or other information is included on the Lobbyists Watch List by the Electoral Commission, and that that inclusion was made in good faith, no action for defamation can be brought against the Crown or the Electoral Commission. The Lobbyists Watch List is to be made a publicly available document pursuant to proposed section 13(1) of the Bill.

29. The Committee notes that a false or inaccurate inclusion on the Lobbyists Watch List could have adverse consequences on an individual's reputation and future professional prospects given its public nature and the adverse implications of being included in that document. The Committee recognises the longstanding right to take action to protect against defamation.

> **The Committee is concerned that without appropriate safeguards to ensure against a false or inaccurate inclusion on the Lobbyists Watch List, the inability to bring proceedings for defamation may result in a trespass on individual rights and liberties. The Committee refers this matter to Parliament for its further consideration.**

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

Ill and widely-defined powers

30. Schedule 3 [3] at proposed section 8(3) provides that a third-party lobbyist is not eligible to be registered if the person is not a fit and proper person.

31. The Electoral Commission is responsible for determining whether an individual who has applied to be a third-party lobbyist is considered a 'fit and proper person'. Despite this, there does not appear to be any statutory guidance as to what may constitute a 'fit and proper person' and – in the absence of such guidance – the decisions to render an applicant ineligible on this basis may be deemed arbitrary.

The Committee notes the Electoral Commission may refuse to register an applicant on the Lobbyists Register if it deems that the individual is not a 'fit and proper person'. The Committee notes the ill and widely-defined powers conferred to the Electoral Commission in being able to make these decisions. The Committee makes no further comment.

Makes rights, liberties or obligations dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Lack of appeal rights

32. Schedule 3 [7] at proposed section 12(1) provides that the Electoral Commission is to maintain the Lobbyists Watch List that will contain the names and other identifying details of any third-party or other lobbyist whom the Electoral Commission determines should be placed on the Lobbyists Watch List because of contraventions of the Lobbyists Code or other provisions of the Act.

33. The Committee notes the absence of any specifically enumerated right to appeal the Electoral Commission's decision to include an individual on the Lobbyists Watch List to the NSW Civil and Administrative Tribunal, or any other external review body. In the absence of any such appeal right, the Committee notes its concern at the lack of oversight on the Electoral Commission to make the correct decision about placing an individual on the Lobbyists Watch List, and any avenue to rectify mistakes made.

The Committee notes the lack of enumerated appeal rights to have inclusions on the Lobbyists Watch List reviewed by an external review body. The Committee refers this matter to Parliament for its further consideration.

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

Commencement by proclamation

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

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.

4. Passenger Transport Bill 2014

Date introduced	18 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Minister for Transport

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to provide for the following matters:

(a) the accreditation of operators of public passenger services,

(b) the authorisation of drivers of buses, taxis and hire cars used for public passenger services,

(c) passenger service contracts relating to public passenger services between Transport for NSW (*TfNSW*) and operators of those services,

(d) licences for the provision of air transport services for regulated air routes,

(e) the accreditation of operators of taxi networks and taxi booking services,

(f) licences for taxis and hire cars and processes for the determination of taxi licence numbers,

(g) maximum fares for public passenger services and schemes for Government subsidised travel, including fare concessions,

(h) investigations and inquiries into transport accidents and incidents,

(i) enforcement of the proposed Act,

(j) drug and alcohol testing of bus and ferry transport safety employees,

(k) consequential repeals and amendments, savings and transitional provisions and other ancillary matters.

BACKGROUND

2. The Bill arises from the first comprehensive review of the passenger transport legislation since 1990. In September 2012, Transport for NSW released a discussion paper calling for submissions and feedback on the operation of the current Act. Approximately 50 submissions were received. Transport for NSW also carried out extensive consultation with industry and community organisations in developing the Bill.

OUTLINE OF PROVISIONS

Part 1 Preliminary

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

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

5. Clause 3 sets out the objects of the proposed Act.

6. Clause 4 defines certain words and expressions used in the proposed Act.

7. Clause 5 defines ***public passenger service***.

8. Clause 6 defines ***community transport service***.

9. Clause 7 defines ***air transport service***. An air transport service is a regular service provided for a regulated air route declared by the Minister for Transport.

10. Clause 8 defines ***taxi service*** and ***taxi***.

11. Clause 9 defines ***hire car service*** and ***hire car***.

12. Clause 10 provides for the proposed Act to be construed so as not to exceed the legislative power of the State.

13. Clause 11 specifies that the proposed Act binds the Crown.

Part 2 Accreditation of operators of public passenger services

Division 1 Preliminary

14. Clause 12 defines certain words and expressions used in the proposed Part. The ***accrediting authority*** for a public passenger service is to be TfNSW for an air transport service and Roads and Maritime Services (***RMS***) in any other case.

15. Clause 13 defines ***close associate***.

16. Clause 14 specifies that the proposed Part does not apply to a public passenger service provided by an aircraft (other than an air transport service) or by a vessel or a train.

Division 2 Accreditation offences

17. Clause 15 makes it an offence to operate a public passenger service without being an accredited operator for that service.

18. Clause 16 makes it an offence for an operator to contravene any condition of the operator's accreditation.

Division 3 Applications for accreditation

19. Clause 17 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to the accrediting authority for accreditation as the operator of a public passenger service and provides for the form of the application.

20. Clause 18 sets out the standards for accreditation by the accrediting authority, including that the proposed operator or any directors and managers nominated by the operator for the purposes of the proposed Part in the application for accreditation are fit and proper persons to be responsible for the management of a public passenger service. The regulations may prescribe standards for an operator for financial viability, passenger and public safety and vehicle maintenance as well as other standards. An applicant to operate a taxi service must also demonstrate the capacity to comply with the taxi service standards to be prescribed by the regulations. An applicant for accreditation as an operator of an air transport service must meet the same standards relating to fit and proper persons and additional standards relating to insurance of and rights to operate aircraft to be used for the service. A person who already holds an accreditation to operate another service may be granted an accreditation if the applicant can satisfy any additional applicable standards and the applicant is not or has not been subject to any action against the accreditation already held.

21. Clause 19 enables an accreditation to be refused on the ground that a close associate of the applicant has previously held an accreditation or an air route licence that has been cancelled.

22. Clause 20 enables an accreditation to be granted unconditionally or subject to conditions.

23. Clause 21 provides for the form of the accreditation to be that approved by the accrediting authority.

24. Clause 22 specifies that the accreditation is to be in force for the period determined by the accrediting authority unless it is sooner cancelled.

25. Clause 23 enables an accreditation to be renewed.

26. Clause 24 requires notice to be given to the applicant of the decision on the application for accreditation.

27. Clause 25 provides that jointly accredited operators each have the obligations of an accredited operator of a public passenger service under the proposed Act.

Division 4 Conditions of accreditation

28. Clause 26 makes an accreditation as the operator of a public passenger service subject to the conditions imposed by the accrediting authority or by the Act or the regulations and enables conditions imposed by the accrediting authority to be varied or revoked at any time by written notice given to the operator.

29. Clause 27 enables an operator of a public passenger service to change its nominated directors or managers at any time and makes it a condition of the accreditation of the operator of a public passenger service that is a body corporate that notice be given to the accrediting authority within 21 days if a nominated director or manager dies or ceases to be a director or manager.

30. Clause 28 makes it a condition of the accreditation of the operator of an air transport service that the operator must not operate a regular air service on a regulated air route unless the operator holds an air route licence for the route.

31. Clause 29 makes it a condition of the accreditation of the operator of a bus service that the operator prepares and implements a drug and alcohol program and ensures that its transport safety employees are not under the influence of alcohol or any drug when about to carry out, or while on duty for the purposes of carrying out, transport safety work. RMS may also arrange for random testing of employees who are about to commence duty or who are on duty. Proposed Schedule 2 contains regulation-making powers relating to drug and alcohol testing procedures and offences.

32. Clause 30 provides that the proposed Act and regulations do not derogate from other legislation relating to the testing of drivers for alcohol and drugs.

33. Clause 31 makes it a condition of the accreditation of the operator of a bus service that the operator prepares and implements a safety management system.

34. Clause 32 makes it a condition of the accreditation of the operator of a taxi service that the operator complies with the taxi service standards prescribed by the regulations.

Division 5 Variation, suspension or cancellation of accreditation

35. Clause 33 sets out the grounds on which the accrediting authority may vary, suspend or cancel an accreditation of an operator of a public passenger service, including failure to comply with an accreditation standard or a condition of accreditation, failure to comply with the proposed Act or the regulations or having a close associate who has previously held an accreditation that has been cancelled.

36. Clause 34 sets out additional grounds on which the accrediting authority may vary, suspend or cancel an accreditation of an operator of a taxi service, including failure to comply with a taxi network requirement that is reasonable and necessary for the taxi network to comply with its obligations under the proposed Act. It also enables action to be taken against both taxi service and hire car service operators if the services are conducted in a manner that causes danger to the public or there is an insufficient third-party insurance policy for any vehicle used for the service.

37. Clause 35 automatically suspends (after 21 days) the accreditation of an individual who is jointly accredited with another individual if the other individual dies and also enables the accreditation to be cancelled or suspended or varied because of the death. It also automatically suspends the accreditation of an operator that is a body corporate if the operator ceases to have any nominated director or manager.

Part 3 Service procurement

Division 1 Passenger service contracts

38. Clause 36 enables TfNSW to enter into a passenger service contract for the provision of a public passenger service for a particular area or route with an accredited operator or a person who is not required to be accredited. TfNSW may seek tenders for contracts or invite them by any other means. A contract must provide for performance standards to be met by the operator and specify the term of the contract. It cannot provide for a right to renew the contract but may confer the first right to negotiate a further contract.

39. Clause 37 enables TfNSW to enter into a further passenger service contract with an operator after the expiry of the term of a contract but makes it clear that there is no

right to or expectation of a further contract after the end of the term of a passenger service contract.

40. Clause 38 requires the performance standards in a passenger service contract to be enforced by civil penalty provisions or in any other manner the contract may provide. Other provisions of a contract may be enforced under civil penalty provisions if so specified in the contract. An amount payable under a civil penalty provision may be recovered as a debt due to the State or, if the contract so provides, by withholding payments under the contract.

41. Clause 39 makes it an offence to conduct a regular timetabled service other than under the authority of a passenger service contract, unless the service is conducted under a subcontract or other arrangement authorised by such a contract or the service is exempted from the requirement by the Minister for Transport. The proposed offence will not apply to an air transport service, a long distance bus or ferry service, a tourist service or a community transport service.

42. Clause 40 enables a passenger service contract to confer the exclusive right to operate a regular service in an area or route to which the contract applies. Actions taken under any such provision are specifically authorised to avoid contravention of the *Competition and Consumer Act 2010* of the Commonwealth.

Division 2 Licensing for regulated air routes

43. Clause 41 makes it an offence to operate an air transport service without being the holder of an air route licence for the regulated air route for which the service is provided.

44. Clause 42 makes it an offence for the holder of an air route licence to contravene any condition of the licence.

45. Clause 43 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to TfNSW for an air route licence and provides for the form of the application.

46. Clause 44 sets out the matters TfNSW must take into account when determining an application for an air route licence.

47. Clause 45 provides that an air route licence is to specify the regulated air route or routes to which it applies and provides that the licence may be unconditional or subject to conditions.

48. Clause 46 provides for the form of an air route licence to be that approved by TfNSW.

49. Clause 47 specifies that an air route licence is to be in force for the period determined by TfNSW unless it is sooner cancelled.

50. Clause 48 provides that an air route licence cannot be renewed but that the previous holder may apply for a new air route licence for the regulated air route concerned.

51. Clause 49 requires notice to be given to the applicant of the decision on the application for an air route licence.

52. Clause 50 provides that jointly licensed holders each have the obligations of the holder of an air route licence under the proposed Act.

53. Clause 51 makes an air route licence subject to the conditions imposed by TfNSW or by the Act or the regulations and enables conditions imposed by TfNSW to be varied or revoked at any time by written notice given to the holder.

54. Clause 52 sets out the grounds on which TfNSW may vary, suspend or cancel an air route licence, including ceasing to be accredited to operate an air transport service, ceasing to operate a regular air service for a regulated air route to which the licence relates or failing to operate it to the satisfaction of TfNSW.

55. Clause 53 enables TfNSW to grant a temporary air route licence for a regulated air route if the current holder's licence is suspended or cancelled, TfNSW is of the opinion that the current holder is not providing the service for the route or is failing to provide a satisfactory service for the route and TfNSW is also of the opinion that the issue of the temporary licence is necessary to maintain an air transport service pending determination or completion of action against the current holder or the granting of a new licence.

56. Clause 54 automatically suspends (after 21 days) the air route licence of an individual who is jointly accredited with another individual if the other individual dies or ceases to jointly provide the service and also enables the licence to be cancelled or suspended or varied because of the death or cessation.

Part 4 Driver authorities

Division 1 Preliminary

57. Clause 55 applies the proposed Part to drivers of vehicles used for bus services, taxi services, hire car services, tourist services, certain charter services and other public passenger services prescribed by the regulations.

58. Clause 56 enables regulations to be made to provide for the types and classes of driver authorities.

Division 2 Driver authority offences

59. Clause 57 makes it an offence to drive a vehicle used to provide a public passenger service to which the proposed Part applies without being the holder of a driver authority for a vehicle of that kind for a service of that kind.

60. Clause 58 makes it an offence for a driver to contravene any condition of the driver's driver authority.

Division 3 Applications for driver authorities

61. Clause 59 enables an individual who is not less than 20 to apply to RMS for a driver authority and provides for the form of the application.

62. Clause 60 sets out the standards for the grant of a driver authority by RMS, including that the applicant must be of good repute and in all other respects a fit and proper person to be the driver of a vehicle used for a public passenger service, that the applicant has demonstrated sufficient responsibility and aptitude to drive the vehicle,

that the applicant holds an unrestricted driver licence to drive a vehicle of the class required and, if the application is for an authority to drive a bus or taxi, that the applicant has completed appropriate training courses or assessment. A person who already holds a driver authority to drive a vehicle may be granted a driver authority if the standards for that authority are substantially similar to those required for the accreditation being applied for or the applicant meets any additional standards for the driver authority and the applicant is not or has not been subject to any action against the driver authority already held.

63. Clause 61 requires an applicant for a driver authority to drive a bus used to provide a bus service to complete an approved bus driver training course or for RMS to be satisfied that the applicant has appropriate competence.

64. Clause 62 requires an applicant for a driver authority to drive a taxi used to provide a taxi service to complete an approved taxi driver training course or for RMS to be satisfied that the applicant has appropriate competence. An applicant must also pass any examinations or assessments prescribed for the purposes of the proposed section by the regulations.

65. Clause 63 enables RMS to refuse to consider an application for a driver authority if, within the previous 12 months, the applicant has been refused a driver authority or a driver authority held by the applicant has been cancelled. A refusal by RMS to consider an application will not be subject to review by the Civil and Administrative Tribunal.

66. Clause 64 enables a driver authority to be granted unconditionally or subject to conditions.

67. Clause 65 provides for the form of a driver authority to be that approved by RMS.

68. Clause 66 specifies that a driver authority is to be in force for the period determined by RMS unless it is sooner cancelled.

69. Clause 67 enables a driver authority to be renewed.

70. Clause 68 requires notice to be given to the applicant of the decision on the application for a driver authority.

Division 4 Conditions of driver authorities

71. Clause 69 makes a driver authority subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the holder.

72. Clause 70 makes it a condition of the driver authority for the driver of a taxi that the driver comply with the directions given by the operator's taxi network or taxi booking service if those directions are authorised to be given under the applicable standards that apply to the taxi network or the taxi booking service.

Division 5 Variation, suspension or cancellation of driver authorities

73. Clause 71 sets out the grounds on which RMS may vary, suspend or cancel a driver authority, including failure to comply with a standard for granting the authority or a

condition of the authority, failure to comply with the proposed Act or the regulations or having action taken against the person's driver licence.

Part 5 Accreditation and membership of taxi network providers and taxi booking services

Division 1 Preliminary

74. Clause 72 defines certain words and expressions used in the proposed Part. A ***member operator*** of a taxi service is an operator of a taxi service who is a member of, or who is otherwise affiliated with, the taxi network. A ***taxi network*** is a facility for the provision of services to member operators relating to the delivery of taxi services by member operators, but does not include a taxi booking service.

Division 2 Accreditation and affiliation offences

75. Clause 73 makes it an offence to operate a taxi network or a taxi booking service without being an accredited operator for that service.

76. Clause 74 makes it an offence for an operator of a taxi network or a taxi booking service to contravene any condition of the operator's accreditation.

77. Clause 75 makes it an offence to operate a taxi service without being a member operator of a taxi network. A member operator is required to ensure that a taxi used in the operator's taxi service is fitted with a working communication device for security and safety purposes that is capable of being activated by the taxi network.

Division 3 Applications for accreditation

78. Clause 76 enables an individual, a group of individuals (including a partnership) or a body corporate to apply to RMS for accreditation as the operator of a taxi network or taxi booking service and provides for the form of the application.

79. Clause 77 sets out the standards for accreditation by RMS, including that the proposed operator or any directors or managers nominated by the operator for the purposes of the proposed Part in the application for accreditation are fit and proper persons to be the operator of a taxi network or taxi booking service. The regulations may prescribe standards for an operator for financial viability and the delivery and supervision and monitoring of taxi services. An applicant must also demonstrate the capacity to comply with the standards to be prescribed by the regulations.

80. Clause 78 enables an accreditation to be granted unconditionally or subject to conditions.

81. Clause 79 provides for the form of an accreditation to be that approved by RMS.

82. Clause 80 specifies that the accreditation is to be in force for the period determined by RMS unless it is sooner cancelled.

83. Clause 81 enables an accreditation to be renewed.

84. Clause 82 requires notice to be given to the applicant of the decision on the application for accreditation.

85. Clause 83 provides that jointly accredited operators each have the obligations of an accredited operator of a taxi network or taxi booking service under the proposed Act.

Division 4 Conditions of accreditation

86. Clause 84 makes an accreditation as the operator of a taxi network or a taxi booking service subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the operator.

87. Clause 85 enables an operator of a taxi network or taxi booking service to change its nominated directors or managers at any time and makes it a condition of the accreditation of the operator of a taxi network or a taxi booking service that notice be given to RMS within 21 days if a nominated director or manager dies or ceases to be a director or manager.

88. Clause 86 makes it a condition of the accreditation of the operator of a taxi network that the operator comply with the taxi network service standards prescribed by the regulations. The standards may relate to safety requirements, network rules, driver training, network monitoring and supervision and other matters.

89. Clause 87 makes it a condition of the accreditation of the operator of a taxi booking service that the operator comply with the taxi booking service standards prescribed by the regulations. Taxi booking service standards may relate to service requirements for booking and requirements to provide booking services for taxi service operators.

Division 5 Variation, suspension or cancellation of accreditation

90. Clause 88 sets out the grounds on which RMS may vary, suspend or cancel an accreditation of an operator of a taxi network or a taxi booking service, including failure to comply with accreditation standards or a condition of accreditation, failure to comply with the proposed Act.

91. Clause 89 automatically suspends (after 21 days) the accreditation of an individual who is jointly accredited with another individual if the other individual dies and also enables the accreditation to be cancelled, suspended or varied because of the death. It also automatically suspends the accreditation of an operator that is a body corporate if the operator ceases to have any nominated directors or managers.

Part 6 Taxi and hire car licences

Division 1 Preliminary

92. Clause 90 defines certain words and expressions used in the proposed Part.

Division 2 Licensing offences

93. Clause 91 makes it an offence for an operator of a taxi service to use a motor vehicle for the service unless the operator is the holder of a taxi licence for that motor vehicle or the motor vehicle is a stand-by taxi.

94. Clause 92 makes it an offence for an operator of a hire car service to use a motor vehicle for the service unless the operator is the holder of a hire car licence for that motor vehicle.

95. Clause 93 makes it an offence for the holder of a taxi licence or a hire car licence (a licence) to contravene any condition of the licence.

96. Clause 94 enables an accredited operator of a taxi service to use an unlicensed stand-by taxi if a licensed taxi is out of operation for repair or service and sets out the conditions for the use of the stand-by taxi. The taxi while in use is taken to be a taxi for which a taxi licence is in force.

Division 3 Applications for licences

97. Clause 95 establishes the classes of licences. An annual taxi licence is for 12 months while a short term taxi licence or hire car licence is for 6 years. An ordinary taxi licence or hire car licence will be for a term determined by RMS.

98. Clause 96 enables a person to apply to RMS for a licence.

99. Clause 97 requires an applicant for a licence to meet any requirements specified in the regulations. An applicant for a licence for a taxi to be operated in the Metropolitan transport district, or prescribed by order by TfNSW, may only be issued with an annual taxi licence.

100. Clause 98 requires RMS not to grant an annual taxi licence to an applicant unless the applicant was the highest ranked bidder or tenderer for the licence, has complied with any requirements for making the bid or tender and has provided any bond or other security required for payment of the annual fee. RMS must also have regard to any determination of the number of annual taxi licences before granting an annual taxi licence.

101. Clause 99 enables a licence to be granted unconditionally or subject to conditions.

102. Clause 100 provides for the form of a licence to be that approved by RMS.

103. Clause 101 provides that a licence may specify the area of operation of a taxi or hire car and that, if no area is specified, the taxi or hire car may be used for a taxi service or hire car service anywhere in New South Wales.

104. Clause 102 specifies that a short term licence is to be in force for the period specified in the licence (not being more than 6 years), and that any other licence is to be in force for the period specified by the proposed Act for the class of licence, unless it is sooner cancelled.

105. Clause 103 enables a licence (other than a short term taxi licence or a short term hire car licence) to be renewed and specifies a maximum number of renewals for annual taxi licences.

106. Clause 104 requires notice to be given to the applicant of the decision on the application for a licence.

Division 4 Conditions of licences

107. Clause 105 makes a licence subject to the conditions imposed by RMS or by the Act or the regulations and enables conditions imposed by RMS to be varied or revoked at any time by written notice given to the holder.

Division 5 Licence fees

108. Clause 106 provides for a licence fee to be payable to RMS on issue and, in the case of an annual licence, on renewal. The fee is in addition to any application fee.

109. Clause 107 provides for the fee for an ordinary taxi licence or hire car licence to be set by bids at public auction or by sealed tenders.

110. Clause 108 provides for the fee for a short term taxi licence or a short term hire car licence to be the amount determined by TfNSW.

111. Clause 109 provides for the fee for an annual taxi licence to be set by bids at public auction or by sealed tenders. However, the fee for an annual taxi licence for a wheelchair accessible taxi is to be determined by TfNSW.

Division 6 Dealings with licences

112. Clause 110 enables a licence to be leased or subleased, or the benefit of a licence to be conferred on another person to the exclusion of the person entitled to the benefit of the licence, without the approval of RMS and provides for the lessee or sublessee of a licence or a person on whom the benefit of a licence is conferred to have the benefit of the authority of the licence to the exclusion of the lessor or sublessor. The lessee or the sublessee or a person having the benefit of the licence is taken to be the holder of the licence for the purposes of the proposed Act or regulations.

113. Clause 111 enables regulations to be made about the application of provisions of the proposed Act or regulations to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 110.

114. Clause 112 enables licence conditions to be imposed relating to the application of conditions of licences to lessors, sublessors, lessees and sublessees of licences and persons who confer and receive the benefits of a licence as referred to in proposed section 110.

115. Clause 113 requires written notice of the lease or sublease, or an arrangement to confer the benefit, of a taxi licence to be given to RMS and makes it an offence to fail to give the notice.

116. Clause 114 gives RMS power to transfer an ordinary taxi or hire car licence to another person on application by the holder. RMS may transfer any licence on application by the legal personal representative of the holder or a trustee of the holder's estate. A transferee or transferor may be required to provide information necessary to calculate transfer levy or register the transfer.

117. Clause 115 provides for a transfer levy on a transfer of a taxi licence, at a rate of 2.5% of the current market value of the licence. No levy is payable on a transfer of a taxi licence to a person entitled under a will or on intestacy of a holder of a licence. A transfer levy of $500 will be payable on the transfer of a hire car licence.

Division 7 Variation, suspension or cancellation of licences

118. Clause 116 sets out the grounds on which RMS may vary, suspend or cancel a licence, including failure to comply with a condition of the licence, failure to comply with the

proposed Act or the regulations, conducting the taxi service or hire car service for which the vehicle is used in a manner that causes danger to the public and having an insufficient third-party insurance policy for the vehicle. A taxi licence may also be varied, suspended or cancelled if the taxi contract determination in relation to drivers of the taxi has not been complied with or the taxi has not been made available in accordance with a taxi network or taxi booking service requirement that is reasonable and necessary for the taxi network or taxi booking service to comply with its obligations under the proposed Act.

Division 8 Determination of release of annual taxi licences

119. Clause 117 applies the proposed Division to annual taxi licences, other than licences for wheelchair accessible taxis.

120. Clause 118 requires TfNSW to make a determination about the number of annual taxi licences before 31 March in each year. A determination may limit the number and type of annual taxi licences that are to be issued to accredited drivers of taxis or operators of taxi services and limit the number of annual taxi licences that may be granted to the same or related applicants. TfNSW may seek expert advice about the matters it is required to consider and is to take into account any recommendation of the Independent Pricing and Regulatory Tribunal (***IPART***) when making a determination.

121. Clause 119 enables the Minister to refer to IPART, for report and recommendation, the number of annual taxi licences to be issued for the year commencing on the following 1 July.

122. Clause 120 sets out matters to be taken into account by TfNSW when making a determination about annual taxi licence numbers, including likely passenger demand and latent demand for taxi services and the viability and sustainability of the taxi industry.

Part 7 Passenger transport fares, concessions and fees

Division 1 Preliminary

123. Clause 121 defines an expression used in the proposed Part.

Division 2 Fares and other related matters

124. Clause 122 applies the proposed Division to public passenger services operated by corporations constituted under the *Transport Administration Act 1988*, taxi services, hire car services and services operated under passenger service contracts that provide for fares to be fixed.

125. Clause 123 enables the Minister to refer all or any services of a public passenger service to which the proposed Division applies to IPART for determination of or a recommendation as to appropriate maximum fares for the services or specified fares or classes of fares for the services.

126. Clause 124 sets out the requirements for IPART investigations and determinations or recommendations under the proposed Division and also enables IPART to report to the Minister on relevant matters that arise from an investigation. Provisions of the *Independent Pricing and Regulatory Tribunal Act 1992* containing investigation and reporting powers will apply to the investigations and determinations.

127. Clause 125 enables TfNSW, by order published in the Gazette (a ***fares order***), to determine the maximum fares for a service or specified fares or classes of fares for a service of a public passenger service to which the proposed Division applies. A fares order may also approve other arrangements for remuneration in connection with a taxi service or a hire car service. A fares order may specify fares or the manner of calculating fares.

128. Clause 126 enables a fares order to specify the maximum amount of a taxi non-cash payment surcharge that may be charged for one hiring of a taxi. The taxi non-cash payment surcharge is a fee or charge that is added to the amount payable to hire a taxi because payment is by a debit, credit, pre-paid or charge card, or an amount payable by an owner, driver or operator of a taxi because an amount for a taxi hire is so paid.

129. Clause 127 makes certain persons guilty of an offence if a taxi non-cash payment surcharge is imposed in contravention of a fares order, including the person who imposed the charge, the owner or driver of the taxi, the operator of the taxi service, a person who provides or maintains enabling equipment and a person who manages or administers the system under which amounts due for the hiring may be paid by the use of a debit, credit, pre-paid or charge card. It will also be an offence to collect in a taxi, or initiate the collection in a taxi, of a taxi non-cash payment surcharge that contravenes a fares order. A defence to the offence is available to a defendant who did not, and could not reasonably be expected to, know that another person had acted in contravention of the proposed section.

Division 3 Conditions of travel or ticketing

130. Clause 128 enables regulations to be made with respect to conditions of travel, conditions for the carriage of freight or other things and conditions for the provision of tickets for a public passenger service, other than a taxi service, hire car service or air transport service. The regulations may deem there to be a contract between a service operator and a passenger, for example, where the fare for a service is collected by using an Opal card.

Division 4 Concessions and subsidies

131. Clause 129 enables the Minister, by order published in the Gazette, to approve a scheme for Government subsidised travel on public passenger services or for other Government subsidised travel. An order may determine the classes of persons entitled to free travel or fare concessions for regulated services and other ancillary matters.

132. Clause 130 confers on TfNSW the function of administering or arranging for the administration of a scheme approved by the Minister under the proposed Division. TfNSW may (subject to the order of the Minister) determine conditions for the issue, cancellation and use of passes for free travel or fare concessions. Regulations may be made which provide that classes of persons are not entitled to free travel or fare concessions and have effect despite the Minister's determination or State anti-discrimination legislation.

Part 8 Safety information and investigations

Division 1 Bus safety information

133. Clause 131 enables RMS to require the operator of a bus service to provide to RMS information about safety measures, or safety, or a safety report and makes it an offence to fail to comply with the requirement. Information is to be given by RMS to the Chief Investigator if it relates to a transport accident or incident that may affect the safe provision of a bus service.

134. Clause 132 requires the operator of a bus service, or a person prescribed by the regulations, to report a notifiable occurrence that affects the bus service to RMS. The kinds of occurrences that are notifiable occurrences are to be prescribed by the regulations.

Division 2 Transport safety investigations

135. Clause 133 confers on the Chief Investigator power to investigate any transport accident or incident that may affect the safe provision of railway operations, a bus service or a ferry service. The Minister may also require the Chief Investigator to investigate and report to the Minister on any such accident or incident. The investigation (a ***transport safety investigation***) of any such accident or incident may extend to all relevant events and circumstances preceding the accident or incident.

136. Clause 134 makes it clear that a transport safety investigation may be carried out and reported on whether or not any other investigation is or has been conducted under any other law (including a law of the Commonwealth) or the accident or incident is subject to other proceedings, a coroner's inquest or inquiry or an inquiry under the proposed Part (a ***transport safety inquiry***).

137. Clause 135 enables the Chief Investigator to conduct a transport safety investigation in the manner the Chief Investigator thinks fit.

138. Clause 136 confers power on the Chief Investigator to require a person to attend to answer questions relating to a transport safety investigation or produce documents or other things relating to a transport safety investigation. A person who is required to answer questions may be required to answer on oath or affirmation.

139. Clause 137 requires the Chief Investigator to give the Minister a written report on a transport safety investigation, including any investigation discontinued by the Chief Investigator. A draft report may be given to the Minister or any other person before the report is completed if necessary for transport safety or to allow submissions about the form of the report or to give advance notice of its likely form.

140. Clause 138 makes it an offence to copy or disclose the contents of a draft report or recommendations relating to a transport safety investigation except where authorised by or under any Act or for the purposes of remedying safety issues or preparing a submission on the report or recommendations. A person provided with a draft report cannot be required to disclose it to a court and is not entitled to take any disciplinary action against an employee on the basis of the report.

141. Clause 139 provides that a current or former Chief Investigator or transport safety investigator is not obliged to comply with a subpoena or similar court direction relating

to an accident or incident the subject of a transport safety investigation if the Chief Investigator has issued a certificate stating that the person is or was involved in the transport safety investigation.

Division 3 Transport safety inquiries

142. Clause 140 enables the Minister to constitute a Board of Inquiry to conduct a transport safety inquiry into a transport accident or incident or other event, occurrence, practice or matter that may affect the safe provision of railway operations, a bus service or a ferry service. The Minister may not terminate an inquiry. A transport safety inquiry may be carried out and reported on whether or not any other investigation is or has been conducted under any other law (including under a law of the Commonwealth) or the matter is subject to other proceedings or a coroner's inquest or inquiry.

143. Clause 141 enables the Chief Investigator to request the Minister to constitute a Board of Inquiry to conduct a transport safety inquiry. The Minister is to constitute the Board of Inquiry or to provide written reasons to the Chief Investigator for not doing so and table the request and reasons in each House of Parliament.

144. Clause 142 provides for the procedure of a Board of Inquiry, including conferring power on the Board to take evidence on oath.

145. Clause 143 provides for the Minister to appoint assessors to sit with a Board of Inquiry to advise the Board on any matter before the Board.

146. Clause 144 confers power on a Board of Inquiry to summon persons to appear before the Board to give evidence and to produce specified documents. A person so appearing may be required to be sworn or affirmed, produce a document or answer a question. It will be an offence, without reasonable excuse, to fail to comply with a requirement of a Board.

147. Clause 145 provides that a current or former member of a Board of Inquiry or authorised officer is not obliged to comply with a subpoena or similar court direction relating to a matter the subject of a transport safety inquiry if the Minister has issued a certificate stating that the person is or was involved in a transport safety inquiry.

Division 4 Transport safety investigators

148. Clause 146 enables the Chief Investigator to appoint an authorised person under the *Transport Administration Act 1988* as a transport safety investigator for the purpose of conducting a transport safety investigation. The investigator is to be issued with an identity card in a form approved by the Minister.

149. Clause 147 requires a transport safety investigator to carry his or her identity card when exercising a power of entry and to produce it if requested to do so by a person in relation to whom the investigator is exercising, or about to exercise, a power.

150. Clause 148 enables a transport safety investigator to exercise the investigation powers set out in proposed Part 1 of Schedule 1 if the investigator believes on reasonable grounds that it is necessary to do so for the purposes of, or in connection with, a transport safety investigation.

Division 5 Miscellaneous

151. Clause 149 requires a report on a transport safety investigation or a transport safety inquiry to be laid before both Houses of Parliament by the Minister within 7 days of receiving it and provides for the procedure if a House is not sitting when the Minister seeks to lay a report before it.

152. Clause 150 enables the Chief Investigator to establish a voluntary reporting system for transport safety employees or rail safety employees to report matters that may affect the safe provision of railway operations, a ferry service or a bus service. Information provided may not be disclosed without consent or unless the Chief Investigator or a court is of the opinion that it is necessary in the public interest.

153. Clause 151 enables the Minister, in consultation with RMS, by written order, to direct a person who carries on a ferry service to comply with a recommendation of a report on a transport safety investigation or transport safety inquiry and makes it an offence, without reasonable excuse, to fail to comply with an order.

Part 9 Enforcement

Division 1 Authorised officers

154. Clause 152 provides for TfNSW to appoint authorised officers to exercise the functions of authorised officers under the proposed Act for matters related to the enforcement of passenger service contracts and other matters.

155. Clause 153 provides for RMS to appoint authorised officers to exercise the functions of authorised officers under the proposed Act for matters related to the functions of RMS.

156. Clause 154 enables TfNSW or RMS, for the purposes of a specified bus or ferry accident or incident, to appoint a person exercising powers, or holding office, under a Commonwealth Act as an authorised officer.

157. Clause 155 specifies that the relevant instrument of appointment of an authorised officer may limit the authority of the officer.

158. Clause 156 requires TfNSW or RMS to issue an authorised officer with an identity card in a form approved by the Minister.

159. Clause 157 requires an authorised officer to carry his or her identity card when exercising a power of entry and to produce it if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, a power.

160. Clause 158 enables an authorised officer to exercise the investigation powers set out in proposed Part 2 of Schedule 1 if the officer believes on reasonable grounds that it is necessary to do so for the purposes of an inspection, transport safety inquiry or other inquiry or to determine whether the Act, regulations, an accreditation, a driver authority, a licence or a passenger service contract or the requirement or exemption under the proposed Act has been contravened.

161. Clause 159 enables RMS to cause inspections to be carried out to ensure that the operator of a public passenger service (other than a service provided by an aircraft) is complying with the terms of the operator's accreditation and any requirements relating

to the safety management system. RMS and TfNSW may also cause inspections to be carried out to ensure that the operator of a public passenger service is complying with a passenger service contract.

Division 2 Offences

162. Clause 160 makes it an offence to hinder or obstruct an authorised officer or a transport safety investigation officer so as to interfere with the exercise of their functions under the proposed Act, to fail to provide reasonable assistance to any such officer who enters a place or land when exercising those functions, to fail to answer questions or provide information to any such officer exercising those functions or to fail to produce documents or other things for inspection by any such officer when required to do so by any such officer when exercising those functions.

163. Clause 161 makes it an offence for a person to obtain or attempt to obtain an accreditation, driver authority or licence under the proposed Act by a statement or misrepresentation that the person knows to be false or misleading. It will also be an offence to forge or fraudulently use an accreditation, driver authority or licence under the proposed Act or to fraudulently allow it to be used by another person.

164. Clause 162 enables an authorised officer to require a person to state his or her full name and address if the authorised officer reasonably suspects the person to be committing or to have committed an offence under the proposed Act or the regulations or an offence against the *Graffiti Control Act 2008* on railway premises or finds the person in circumstances or has information that leads the officer to reasonably suspect that the person has committed such an offence. It will be an offence to refuse to give the information or to state a wrong name or residential address. A person will not be guilty of an offence unless the person is warned that a failure to comply is an offence and the officer has identified himself or herself as an authorised officer.

165. Clause 163 prohibits the advertisement of a commercial service involving the use of a vehicle if the service is of a kind that is required to be accredited under the proposed Act or the vehicle is of a kind that is required to be licensed under the proposed Act, and there is no accreditation or licence.

166. Clause 164 makes it an offence for a person to whom an accreditation, driver authority or licence under the proposed Act was granted not to immediately return the accreditation, driver authority or licence to RMS if it is cancelled. It will also be an offence for a person to whom a taxi or hire car licence was granted not to return the number-plates allocated to the vehicle under the licence to RMS or the Commissioner of Police within 7 days of the suspension or cancellation or the licence ceasing to have effect.

Division 3 Proceedings for offences

167. Clause 165 provides that a director of a corporation or a person concerned in the management of a corporation is taken to have contravened a provision contravened by the corporation if the director or person knowingly authorised or permitted the contravention. The director or person may be proceeded against for the contravention whether or not the corporation has been proceeded against or convicted.

168. Clause 166 enables penalty notices to be issued for offences that are prescribed by the regulations.

169. Clause 167 provides for proceedings for offences under the proposed Act or regulations to be dealt with summarily before the Local Court or the Supreme Court and limits the maximum penalty that may be imposed by the Local Court for an offence to 500 penalty units ($55,000).

170. Clause 168 enables a court to impose an additional penalty amount, not exceeding 250 penalty units ($27,500), for an offence committed on or in relation to railway premises, if satisfied that the actions of the offender caused or contributed to appreciable danger or harm or were reasonably likely to cause or contribute to such danger or harm.

Part 10 Miscellaneous

171. Clause 169 enables an application to be made to the Civil and Administrative Tribunal for an administrative review of a decision to refuse an application for an accreditation, driver authority or licence, to suspend or cancel an accreditation, driver authority or licence, to vary a condition of an accreditation, driver authority or licence or to impose or revoke a condition of an accreditation, driver authority or licence.

172. Clause 170 enables RMS and TfNSW to enter into information sharing arrangements with each other, WorkCover, the Chief Investigator, the Commissioner of Police and equivalent persons in other jurisdictions, IPART or other bodies prescribed by the regulations to share information about possible breaches of the proposed Act or the safe provision of public passenger services and other matters.

173. Clause 171 permits RMS or TfNSW to disclose, or permit the disclosure of, information about the accreditation, authorisation or licensing status of an identified person if it is reasonably necessary for the purposes of the proposed Act or regulations.

174. Clause 172 requires RMS and TfNSW to keep records relating to accreditations, authorities, authorisations or licences granted by them and provides for the issue and use of evidentiary certificates as to particulars of accreditations, authorities, authorisations or licences kept in those records.

175. Clause 173 requires the operator of a ferry service to prepare and implement a drug and alcohol program and ensure that its transport safety employees are not under the influence of alcohol or any drug when about to carry out, or while on duty for the purposes of carrying out, transport safety work. RMS may also arrange for random testing of employees who are on duty. Proposed Schedule 2 contains regulation-making powers relating to drug and alcohol testing procedures and offences.

176. Clause 174 enables fees, charges or levies payable under the proposed Act to be recovered by RMS or TfNSW as a debt in a court of competent jurisdiction and makes it clear that the amount of a fee for a taxi licence or hire car licence may exceed the amount required to cover administrative or other costs.

177. Clause 175 provides for the manner in which documents are to be served under the proposed Act.

178. Clause 176 enables the Governor to make regulations for the purposes of the proposed Act.

179. Clause 177 enables a regulation that creates an offence relating to the carrying out of transport safety work under the influence of alcohol or any other drug or to tests given to transport safety employees relating to alcohol or any other drug to be punishable by a period of imprisonment not exceeding 9 months. The proposed section also applies provisions of the *Road Transport Act 2013* to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of regulations under the proposed Act.

180. Clause 178 provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the proposed Act or any statement or conduct relating to the enactment or operation of the proposed Act.

181. Clause 179 repeals the *Air Transport Act 1964* and the *Passenger Transport Act 1990*.

182. Clause 180 provides for the review of the proposed Act in 5 years.

Schedule 1 Investigation and inspection powers

Part 1 Powers of transport safety investigators

183. Part 1 sets out the powers of transport safety investigators when conducting an investigation, including powers of entry, powers on premises and vehicles, powers to secure a site, powers to stop and detain vehicles, powers relating to documents and other material seized and power to obtain search warrants.

Part 2 Powers of authorised officers

184. Part 2 sets out the powers of authorised officers when conducting an investigation, inspection or inquiry, including powers of entry, powers in premises and vehicles, powers to secure a site, powers to stop and detain vehicles, powers relating to the production of documents and other material, powers relating to documents and other material seized and power to obtain search warrants.

Part 3 General provisions about investigation powers

185. Part 3 contains general provisions relating to the exercise of functions by transport safety investigators or authorised officers, including a requirement that no more than reasonable force be used, that compensation be paid for certain damage caused by transport safety investigators or authorised officers and a provision relating to protections against self-incrimination.

Schedule 2 Regulation-making powers

186. Schedule 2 sets out the matters about which regulations may be made for the purposes of the proposed Act.

Schedule 3 Savings, transitional and other provisions

187. Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Acts

188. Schedule 4 amends the Acts specified in the Schedule as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Personal physical integrity

189. It is a condition of accreditation for bus and ferry service operators to prepare and implement a drug and alcohol program and to ensure that all transport safety employees are not under the influence of alcohol or any other drugs when about to carry out, or while carrying out, transport safety work. RMS may also carry out random drug and alcohol testing of these employees (see clauses 29 and 173 of the Bill).

190. Schedule 2 clause 12 of the Bill also provides that the regulations may deal with matters relating to drug and alcohol testing of transport safety employees including the conduct of testing, which may include taking samples of blood, urine or other body tissues or fluids.

> **Random drug and alcohol testing, particularly where that testing may include taking samples of a person's blood, urine or other body tissues or fluids, could impact on an individual's right to personal physical integrity. However, the Committee notes the safety objectives of carrying out testing in these circumstances and also that such testing is already carried out under the current Act. Any regulations which are made with respect to drug and alcohol testing can also be subject to disallowance by Parliament under relevant provisions of the *Subordinate Legislation Act 1989*. The Committee therefore makes no further comment.**

Entry onto property without consent or a warrant

191. Schedule 1 clause 2 of the Bill permits a transport safety investigator to enter certain premises without the occupier's consent and without obtaining a search warrant if the investigator believes, on reasonable grounds, that it is necessary to do so for the purposes of an investigation into a 'notifiable occurrence'. The kinds of premises which an investigator is permitted to enter include accident sites, premises that need to be entered to access an accident site, and vehicles.

192. Notifiable occurrences in relation to buses will be prescribed by regulations. Notifiable occurrences also include certain accidents or incidents associated with railway operations as defined in the *Rail Safety National Law* (NSW).

> **Entering property without the owner or occupier's consent or without a warrant could impact on an individual's property rights. However, there is a similar provision in the existing Act. The Committee also notes the safety objectives of the proposed provision and that before entering premises in these circumstances; an investigator must take reasonable steps to give the occupier notice of their rights and obligations. The Committee makes no further comment.**

Right against self-incrimination

193. Schedule 1 clause 29 of the Bill states that a person is not excused from a requirement under the Act to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make them liable to a penalty.

194. Information provided in compliance with a requirement of the Act is generally not admissible in evidence against an individual in criminal proceedings if they objected at the time to providing such information on the ground that it might incriminate them, or they were not warned of their right to make such an objection. However, certain information provided can be admissible in evidence against an individual in criminal proceedings for offences in clause 160 of the Bill, which relate to hindering and obstructing investigations or failing to provide reasonable assistance with an investigation including in relation to answering questions, providing information, etc.

The Committee notes that Schedule 1 clause 29 of the Bill could impact on an individual's right against self-incrimination particularly given that certain information provided in relation to investigations can be admissible as evidence against an individual in criminal proceedings for offences against clause 160 of the Bill. The Committee makes no further comment.

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

Regulations may create offences punishable by imprisonment

195. Clause 177 of the Bill enables the regulations to create certain offences relating to drug and alcohol testing and to set maximum penalties of imprisonment for up to 9 months. The kinds of matters that may be dealt with in the regulations include:

- the carrying out of transport safety work by a transport safety employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol of another drug is present in the employee's breath, blood or urine;
- the refusal or failure by a transport safety employee to undergo tests or otherwise comply with test procedures relating to alcohol or other drugs;
- interference by a transport safety employee with results of such tests.

The Bill permits the regulations to create offences with significant penalties of up to 9 months imprisonment. However, the Committee notes that the existing regulation already contains drug and alcohol related offences which carry penalties of up to 9 months imprisonment. The Committee also acknowledges that any regulation prepared will need to be tabled in Parliament and is subject to disallowance. The Committee therefore makes no further comment.

Commencement by proclamation

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

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.

5. Road Transport Amendment (Mandatory Alcohol Interlock Program) Bill 2014

Date introduced	17 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Minister for Transport

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Road Transport Act 2013 (the Principal Act):

   (a) to replace provisions of that Act giving a court the discretion to order the use of breath alcohol interlock devices fitted to motor vehicles as an alternative to disqualification for drivers convicted of certain alcohol-related driving offences with provisions requiring the making of a mandatory interlock order imposing a mandatory period of disqualification together with such an interlock requirement, and

   (b) to provide for the accreditation of persons installing, removing, maintaining and carrying out other functions in relation to such devices and for Roads and Maritime Services to enter into agreements concerning the exercise of such functions, and

   (c) to enable the Authority to require certain holders of licences who repeatedly exceed specified demerit point thresholds to undertake driver education courses and driver knowledge tests, and

   (d) to make provisions of a consequential or savings and transitional nature.

BACKGROUND

2. In his Second Reading Speech to Parliament, Mr Ray Williams MP, Parliamentary Secretary for Transport and Roads (on behalf of the Hon Gladys Berejiklian MP, Minister for Transport) told Parliament that the Bill "represents the next step in combating drink driving and repeat traffic offenders in NSW, and has been developed following extensive road safety research and consultation with key agencies".

3. Mr Williams further stated that the measures proposed in the Bill were outlined in the Government's 10 year Road Safety Strategy released in March 2013, have the support of NRMA Motoring and Services, and are consistent with the spirit of the NRMA's "3 Point Plan to Tackle Bad Drivers".

4. Alcohol interlocks are devices that are connected to the ignition of an offender's vehicle that prevent the engine from starting if a breath sample provided by the driver is above a set limit. Drivers who participate in an interlock program are restricted to driving only vehicles with these devices installed.

5. Mr Williams indicated that interlock programs help offenders to learn how to separate their drinking from their driving whilst enabling them to continue to access employment and essential services. However, while courts can currently make an order enabling certain drink-driving offenders to participate in a NSW interlock program participation is voluntary and has a low take-up rate amongst offenders. The Bill makes it compulsory for courts to issue interlock orders to repeat and serious offenders convicted of an eligible alcohol-related offences.

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 proclaimed.

Schedule 1 Amendment of Road Transport Act 2013 No 18

Mandatory alcohol interlock program

8. Schedule 1 [29] substitutes Division 2 of Part 7.4 of the Principal Act with a new Division to achieve the object described in paragraph (a) of the above 'Purpose and Description' section.

9. The new Division will apply only to persons convicted of a mandatory interlock offence (as defined in proposed section 209) committed after the commencement of proposed section 208.

10. Persons to whom a disqualification order applied under the Division being replaced will continue to be subject to the provisions applicable before substitution of the Division (Schedule 1 [33])).

11. Under the new Division, a court that convicts a person of a mandatory interlock offence must make either a mandatory interlock order or an interlock exemption order in respect of the person (proposed section 210).

12. The effect of a mandatory interlock order is to disqualify the person from holding any licence for a minimum disqualification period prescribed by proposed section 211 (or a longer period specified by the court) and to disqualify the person from holding a licence (other than a learner licence or an interlock driver licence) for a further minimum or specified period. An interlock driver licence is a conditional licence that restricts the holder from driving a vehicle unless it is fitted with an approved interlock device and imposes certain conditions (such as conditions relating to use and maintenance of the device).

13. An interlock exemption order exempts an offender from the operation of section 211 and can only be made if the offender satisfies the court as to certain matters specified in proposed section 212.

14. If an interlock exemption order is made, the offender will be disqualified from driving under section 205 of the Principal Act and may be required by the Authority to undergo a drink driving education program. An offender who is subject to an interlock exemption order is able, in accordance with proposed section 213, to convert the disqualification period applying to the offender into an interlock period.

15. Proposed section 214 enables a court to make an interlock order in relation to a person convicted of certain prescribed dangerous driving offences.

16. Proposed section 215 describes participation in an interlock program and makes it clear that the Authority may refuse to issue to a person who wishes to cease participating in such a program with a licence without an interlock condition in certain circumstances.

17. Proposed sections 215A and 215B describe the effect of completing an interlock period.

18. Schedule 1 [30] and [31] amend section 225 of the Principal Act so that periods of suspension under immediate licence suspension notices may be taken into account by a court in imposing mandatory interlock orders.

19. Schedule 1 [3] makes a consequential amendment to section 9 of the Principal Act to explain the meaning of the term "second or subsequent offence" as used in the definition of mandatory interlock offence in proposed section 209.

20. Schedule 1 [20]–[26] make consequential amendments to Part 5.1 of the Principal Act (Alcohol and other drug use).

21. Schedule 1 [27] and [28] make consequential amendments to Division 1 (Licence disqualification) of Part 7.4 of the Principal Act.

Accreditation of interlock service providers

22. Schedule 1 [8]–[15] and [17]–[19] amend Part 3.3 (Interlock devices) of the Principal Act to achieve the object described in paragraph (b) of the above 'Purpose and Description' section.

23. Schedule 1 [16] amends section 47 of the Principal Act to enable statutory rules to be made with respect to the issue of interlock driver licences to persons who held licences in other jurisdictions that were subject to interlock conditions.

Repeated incurrence of threshold number of demerit points

24. Schedule 1 [7] inserts proposed section 43A into the Principal Act to achieve the object described in paragraph (c) of the above 'Purpose and Description' section.

25. Proposed section 43A enables the Authority to require the holder of an unrestricted driver licence who incurs the threshold number of demerit points on 2 occasions within a period of 5 years to undertake a specified driver knowledge test or driver education course (or both) and the holder of a provisional P1 or P2 licence who incurs the threshold number of demerit points on 2 occasions (whether or not within a 5-year period) to undertake a specified driver knowledge test. Failure to comply with such a requirement may result in an extension of any period of suspension or licence ineligibility applicable to the holder or suspension of all licences held by the holder.

26. Schedule 1 [4]–[6] make consequential amendments to section 36 of the Principal Act with respect to when the good behaviour period of a person who makes an election under that section

27. to be of good behaviour as an alternative to licence suspension or ineligibility commences if the person is required to undertake a driver knowledge test under section 43A.

28. Schedule 1 [1] inserts definitions of driver education course and driver knowledge test.

29. Schedule 1 [2] amends the definition of threshold number of demerit points to cover holders of unrestricted driver licences.

30. Schedule 1 [32] amends Schedule 1 to the Principal Act to include the power to make statutory rules with respect to driver education courses to be undertaken by holders of driver licences who exceed the threshold number of demerit points.

Savings and transitional provisions

31. Schedule 1 [33] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Mandatory Minimum Sentences

32. Proposed sections 210 and 211 of the Bill provide that a court that convicts a person of an eligible alcohol-related driving offence must disqualify him or her from driving for a specified minimum amount of time and must further require him or her to have an alcohol interlock device fitted to any car that he or she drives for a specified minimum amount of time, following the disqualification period. Two narrow exemptions to the making of such orders are available to the court under proposed section 212 – where the offender has a medical condition that stops him/her providing a sufficient breath sample to operate the interlock device, or s/he does not have access to a vehicle, but the court's discretion is severely limited.

> **The Committee is concerned whenever mandatory minimum sentences are included in legislation. Unlike courts, the Parliament cannot consider the individual circumstances of each case before deciding upon an appropriate penalty. Mandatory minimum sentences may lead to an unjust penalty disproportionate to the seriousness of the offence committed. The Committee makes no further comment.**

Zero Blood Alcohol Requirement

33. The Second Reading Speech on the Bill confirms that any driver who holds an interlock licence as a result of the Bill will be subject to a zero blood alcohol requirement. It will not be possible to start a vehicle fitted with an interlock device if any alcohol is present.

> **The Committee notes that interlock licence holders are subject to a zero blood alcohol requirement under the Bill. There is no level of tolerance, such as a 0.02 concentration, to account for 'false positives' where alcohol is present in the blood but none has been consumed (e.g. where a person has used mouthwash). In such instances driving ability would not be affected but an interlock licence holder would be unable to use his/her vehicle. Nonetheless, the Bill aims to completely separate drinking and driving in persons who have**

been convicted of drink driving offences. A small tolerance such as 0.02 may undermine this goal. The Committee makes no further comment.

Effect on Third Parties

34. Proposed section 212 of the Bill provides that a court cannot make an order exempting an offender from a requirement to install an alcohol interlock device in any vehicle he or she drives merely because the registered operator of the vehicle refuses to consent to the installation of an interlock device in the vehicle.

The Committee notes the effect of the Bill's mandatory alcohol interlock orders on people other than the offender who use the vehicle fitted with the interlock device, especially registered owners. Such people will be required to comply with a zero blood alcohol requirement to be able to use their vehicle regardless of the type of driving licence they hold. The court has no discretion to impose an alternative penalty in such situations. This results in the punishment of people who have committed no offence. The Committee makes no further comment.

Inconsistent Sentencing

35. Proposed section 212 of the Bill provides that a court cannot make an order exempting an offender from a requirement to install an alcohol interlock device in any vehicle he or she drives merely because he or she cannot afford the cost of installing or maintaining an approved interlock device. Under proposed section 211, if such an offender fails to install such a device in any vehicle driven by him or her, he or she must be disqualified from driving for a mandatory period of 5 years from the date of his or her conviction.

The Committee notes that a person who cannot afford the cost of installing or maintaining an approved interlock device may be disadvantaged by the Bill and disqualified from driving for 5 years where more affluent people convicted of the same offence would be disqualified from driving for a much shorter period because they can afford an interlock device. While the Second Reading Speech to the Bill indicates a financial assistance scheme exists which includes subsidies for eligible concession card holders and others in extreme financial hardship, it is unclear whether this will cover all those in need. The Committee makes no further comment.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions

Non-reviewable Decision

36. Under proposed section 215 of the Bill, after completing the period of time required by the court with an alcohol interlock device fitted to his or her vehicle, a person can apply for a licence without an interlock condition attached. However, Roads and Maritime Services (RMS) can refuse to issue such a licence because of any licence contravention or any medical assessment concerning the person's fitness to drive.

It is not clear whether the decision to refuse to issue a licence, without an interlock condition attached, to a person who has completed the required interlock period is judicially reviewable. Nonetheless, such a decision would not prevent the person from driving, only from driving without an interlock

device fitted to his/her vehicle. Given this, and the fact these provisions apply to people convicted of alcohol-related driving offences who, in the opinion of RMS, have not sufficiently addressed their alcohol-related issues; and the Bill's aim to promote behavioural change through the separation of drinking and driving, the Committee makes no further comment.

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

Commencement by Proclamation

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

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or on assent, not by proclamation.

6. St Shenouda Coptic Orthodox Monastery (NSW) Property Trust Bill 2014*

Date introduced	19 June 2014
House introduced	Legislative Council
Member responsible	Rev'd the Hon. Fred Nile MLC
Portfolio	Private Member's Bill

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to constitute a statutory corporation to hold property on behalf of the St. Shenouda Coptic Orthodox Monastery.

2. The Bill also specifies the functions of the statutory corporation and to vest in the statutory corporation property held in trust for the Monastery, without the need to pay duty.

BACKGROUND

3. The St. Shenouda Monastery was established in 1993 and officially canonised and recognised by the Coptic Orthodox Holy Synod in 2009. This Bill establishes the corporate governance arrangements for management of St. Shenouda's property holdings.

OUTLINE OF PROVISIONS

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

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

6. Clause 3 defines certain words and expressions used in the proposed Act.

7. Clause 4 provides for the St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust (referred to in the proposed Act as the Trust) to be established as a corporation. The Bishop of St. Shenouda Coptic Orthodox Monastery is to be the sole trustee of the Trust.

8. Clause 5 specifies the functions of the Trust.

9. Clause 6 empowers the Bishop to delegate the Bishop's functions under the proposed Act to any 3 members of the General Board of the St. Shenouda Coptic Orthodox Monastery, at least one of whom is a clerical member.

10. Clause 7 provides for the making of by-laws concerning the control, management and administration of, and dealings with, trust property.

11. Clause 8 provides for the vesting in the Trust of property currently vested in the company called Coptic Orthodox St. Shenouda Monastery Limited or currently held in trust for the St. Shenouda Coptic Orthodox Monastery.

12. Clause 9 provides for the vesting in the Trust of property given to, or receivable or recoverable by, the St. Shenouda Coptic Orthodox Monastery in the future.

13. Clause 10 enables the Trust to hold property alone or jointly.

14. Clause 11 provides for the investment of funds by the Trust and enables the Trust to invest, as one fund, money held for different purposes.

15. Clause 12 enables the Trust to make advances from its trust funds and specifies how such advances may be made.

16. Clause 13 enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.

17. Clause 14 enables the Trust to vary the terms of a trust if it has become impossible or inexpedient to carry out those terms.

18. Clause 15 enables the Trust to be the executor or administrator of an estate in which the St. Shenouda Coptic Orthodox Monastery has a beneficial interest. The clause also enables the Trust to accept appointment as trustee of property held for the St. Shenouda Coptic Orthodox Monastery's benefit.

19. Clause 16 authorises the Trust to act on behalf of the St. Shenouda Coptic Orthodox Monastery in settling the compensation payable in the event that any trust property is exchanged, dedicated or compulsorily acquired.

20. Clause 17 provides for the use and custody of the seal of the Trust.

21. Clause 18 provides for the execution on behalf of the Trust of instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

22. Clause 19 enables the Trust to appoint an agent to execute documents on its behalf.

23. Clause 20 enables the Trust to certify that it holds property in trust for the St. Shenouda Coptic Orthodox Monastery.

24. Clause 21 provides that, if a person obtains a receipt for money paid to the Trust, the person will not be liable if the money is subsequently lost or misapplied or is not applied.

25. Clause 22 removes the need for a person involved in a property dealing with the Trust to inquire whether the Trust has power to deal with the property and protects the person even if the person had notice that the Trust had no such power.

26. Clause 23 entitles the Bishop and any other person exercising functions under the proposed Act to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

27. Clause 24 provides for the service of documents on the Trust.

28. Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, it provides that, when property vests in the Trust in accordance with proposed section 8, the rights, obligations and liabilities of the former trustees in relation to the property will become rights, obligations and liabilities of the Trust. It also enables the making of regulations of a savings or transitional nature.

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. Water Industry Corporation Amendment (Review) Bill 2014

Date introduced	18 June 2014
House introduced	Legislative Assembly
Minister responsible	The Hon. Kevin Humphries MP
Portfolio	Minister for Natural Resources, Lands and Water

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make amendments to the *Water Industry Competition Act 2006 (*the principal Act) to implement the recommendations of the Urban Water Regulation Review and, in particular:

   (a) to separately provide for design and operational approvals for water industry infrastructure and for licences for the operation of water industry infrastructure and the sale of water or sewerage services,

   (b) to narrow the legislative scheme of approvals and licensing to particular classes of water industry infrastructure focusing on the risks to public health and customers and removing duplication in relation to schemes already approved under section 68 of the *Local Government Act 1993*,

   (c) to extend the application of the legislative scheme of approvals and licensing to metropolitan councils,

   (d) to remove the requirement for entities regulated by the principal Act to obtain sufficient water other than from a public water utility while including measures to manage the degree of competition with incumbent utilities that is permitted for the provision of services to small retail customers,

   (e) to provide for a scheme of implied contracts on standard terms and conditions to put entities regulated by the act in the same position as public utilities,

   (f) to extend the last resort arrangements for ensuring continuity of supply of services defined as, or determined to be, essential to cover the operation of infrastructure as well as the retail supply of water or sewerage services,

   (g) to provide that land and infrastructure may be acquired by a public water utility if that is necessary to resolve a failure of a licensee and to ensure the continuity of an essential service,

   (h) to review and increase penalties as appropriate, and

   (i) to include review and appeal provisions

BACKGROUND

2. The *Water Industry Competition Act 2006* was introduced to enable new market entrants to access existing water industry infrastructure and to create licensing regime to ensure that new entrants operate in a manner than protects public health, consumers and the environment.

3. As required under section 104 of the principal Act, the five-year review report was tabled in Parliament in November 2012. Following from the review's findings, a discussion paper followed in late 2012 to discuss ways to improve the water management architecture and, in particular, rectify the uneven playing field that has emerged by the different standards applied to public and private utilities.

4. Feedback on the paper informed the development of a package of reforms which were outlined in a position paper released in February this year.

5. In total, the Urban Water Regulation review has been informed by three separate public consultation processes. More than 240 stakeholders have participated in seven public workshops, 97 written submissions have been provided, and there have been numerous meeting and discussions with key stakeholders.

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.

8. Schedule 1 [1] amends the long title to ensure that it properly captures the scope of the principal Act, including as proposed to be amended.

9. Schedule 1 [2] introduces an objects clause setting out matters that must be taken into account in administration of the principal Act. These are derived from relevant licensing principles currently set out in section 7 of the principal Act.

10. Schedule 1 [3] substitutes Part 2 of the principal Act which currently deals with licensing of network operators and retail suppliers. Proposed Part 2 establishes a scheme of approvals for certain infrastructure and licences for operators of the infrastructure and retailers of water or sewerage services provided by means of the infrastructure. The terminology is changed from "network operator" to "operator" for accuracy and "retail supplier" to "retailer" for simplicity. Proposed Division 1 (section 5) deals with the scope of the Part. Proposed section 5 establishes the scope of the approval and licensing scheme (a significantly narrower approach than that provided by the current scheme). It applies Part 2 to category A schemes (for providing water or sewerage services to 30 or more small retail customer premises), large drinking water facilities, large sewage treatment facilities and other prescribed water industry infrastructure. It is intended that the regulations will set out criteria for identifying high risk and other infrastructure that is to be subject to Part 2. The proposed section excludes infrastructure operated by public water utilities and infrastructure operated under approvals under section 68 of the *Local Government Act 1993* and contemplates further exclusions being set out in the regulations.

11. Proposed Division 2 (sections 6–9) sets out when an approval or licence is required in connection with water industry infrastructure to which Part 2 applies.

12. Proposed section 6 requires a design approval for the carrying out of works for construction, installation or alteration of water industry infrastructure (including testing and commissioning of infrastructure prior to operation on a commercial basis). It is intended that the regulations will exempt from the application of this section trivial alterations of low risk. Proposed section 7 requires an operational approval to be obtained by the owner of water industry infrastructure before commercial operation of the infrastructure commences. Proposed changes to definitions in the Dictionary mean that if there is a long term lease over the infrastructure, the lessee will be regarded as the owner and subject to this obligation.

13. Proposed section 8 requires a licence for operation of water industry infrastructure. In addition, there must be an arrangement in place between the holder of the operational approval for the infrastructure and the licensee. However, a person engaged to construct the works need not have an operator's licence in order to commission and test the infrastructure in accordance with a design approval prior to the infrastructure being operated on a commercial basis. If different parts of water industry infrastructure are operated by different corporations, each corporation would require an operator's licence.

14. Proposed section 9 requires a licence for the sale of water or sewerage services provided by means of a category A scheme. In addition, there must be an arrangement in place between the holder of the operational approval for the scheme and the licensee. The proposed section also requires a licence for the sale of other water or sewerage services to small retail customers (including services physically provided by a public water utility or another entity under another Act) other than by the owner or operator of the relevant infrastructure. This requirement, together with the condition imposed by proposed section 20F (1), is designed to manage the degree of competition with incumbent utilities that is permitted for the provision of services to small retail customers. It is proposed to allow a licensed retailer to provide a consolidated retail service to its customers (and a single bill) if the retailer is already providing retail services in connection with an approved category A scheme. For example, a licensed retailer may sell to small retail customers recycled water and sewerage services provided by a category A scheme approved under the principal Act. The same retailer could also sell drinking water (delivered by public water utility infrastructure), so long as the customer agrees to switch from the public water utility to the licensed retailer.

15. Proposed Division 3 (sections 10–12) sets out additional objects of the Part relevant to the grant of an approval or licence, a suitability test for the grant of an approval or licence and a process for determination by IPART that infrastructure is essential infrastructure for the purposes of the principal Act.

16. Proposed section 10 sets out additional objects of the Part. These objects reflect the licensing principles currently set out in section 7 of the Act that are not covered by the general objects of the Act set out in proposed section 2A.

17. Proposed section 11 is an interpretation provision for the test of whether a corporation is a suitable corporation to be granted an approval or licence under the principal Act.

The test extends to issues of compliance and criminal conduct, reputation, character, solvency and capacity.

18. Proposed section 12 empowers IPART to designate water industry infrastructure that meets specified criteria as essential infrastructure. The designation brings the infrastructure within the requirements for last resort arrangements. Under proposed section 14 (4) (f), IPART cannot grant an operational approval in relation to infrastructure that has been designated as essential unless a last resort provider has been designated for each provider of the essential service. However, this requirement does not apply where the essential service is provided by a council. Usually the designation would be made at the design approval stage but circumstances may change and it may be necessary to make a designation at a later stage.

19. Proposed Division 4 (sections 13–20A) sets out various matters relating to approvals.

20. Proposed section 13 requires IPART to determine an application and sets out requirements for inviting submissions on an application. Decisions must be published on IPART's website. The proposed section also deals with a determination by IPART that particular water industry infrastructure for which an approval is sought is essential infrastructure.

21. Proposed section 14 sets out that a design approval authorises works to be carried out as specified in the approval and subject to its conditions and establishes criteria for the grant of an approval. The approval holder may not be an individual. The requirements for a design approval include the following:

    - that the applicant is a suitable corporation to be granted the approval,
    - that the proposal will, if the infrastructure is constructed, installed or altered as proposed, comply with appropriate standards and water quality objectives and has been audited as approved by IPART to assess compliance with that requirement,
    - that the applicant has established:
    - that it is reasonable to believe that the proposal is financially viable based on information that is reasonably available, and
    - in the case of a category A scheme—that it is not reasonably foreseeable that the scheme will have significant adverse financial implications for small retail customers,
    - that the applicant is a licensed operator of infrastructure of the relevant class and proposes to operate the infrastructure under the licence or has entered into a suitable agreement with a licensed operator for the operation of the infrastructure,
    - that the applicant or other licensed operator (as the case requires) has certified (in the manner and form required by IPART) that it will have the capacity (including technical,

financial and organisational capacity) to operate the infrastructure in a manner that does not present a risk to public health or a significant risk of harm to the environment.

The requirements for an operational approval include the following:

- that the applicant is a suitable corporation to be granted the approval,
- that the infrastructure has been constructed, installed or altered substantially in compliance with the design approval,
- that the infrastructure complies with appropriate standards and water quality objectives and has been audited for compliance as approved by IPART to assess compliance with that requirement,
- in the case of a category A scheme—that the applicant is a licensed retailer and proposes to sell the water or sewerage services provided by means of the scheme or has entered into a suitable agreement with a licensed retailer for the sale of water or sewerage services provided by means of the scheme,
- in the case of essential infrastructure—that a last resort provider has been designated for each essential service provider other than a council.

It is also provided that IPART may refuse to grant an approval if it is not satisfied as to questions of capacity in relation to the proposed licensed operator or licensed retailer. This process is additional to the assessment of capacity that occurs as part of the licensing process and enables IPART to consider whether the licensee has the capacity to undertake all the activities that it has been engaged to undertake.

22. Proposed section 15 sets out the scheme for conditions of approval. It contemplates that conditions may be imposed by the Act or the regulations or by IPART on the grant of the approval, subsequently under this provision or as disciplinary action. The section also makes it an offence for the holder of an approval to contravene the conditions and requires the holder to take all reasonable steps to facilitate compliance by others (for example, a construction company or licensed operator) bound by conditions of the approval.

23. Proposed section 16 sets out that a design approval is subject to a condition requiring the holder to maintain a suitable agreement with a licensed operator and to notify IPART of variations to the agreement. The proposed section provides examples of conditions that may be imposed by the regulations or IPART, including a condition requiring the giving of security for compliance with conditions and the completion of the project.

24. Proposed section 17 sets out several conditions imposed on the holder of an operational approval and provides examples of conditions that may be imposed by the regulations or IPART, including a condition requiring the giving of security for compliance with conditions and the continued operation of the infrastructure. The conditions imposed require the holder to ensure relevant licensees are involved and to ensure that there is not more than one licensed retailer for a particular service provided by means of a

category A scheme. The latter limitation is supported by proposed section 20Z. The conditions also require the holder to take all reasonable steps to prevent the need for the last resort arrangements to be brought into play.

25. Proposed section 18 states that an approval remains in force until it is cancelled.

26. Proposed section 19 contemplates an application for variation of the works authorised by a design approval. IPART may grant a variation if it is satisfied that:

- the approval as varied will be substantially the same as the original approval, and
- no prejudice will be caused to any person who made a submission concerning the application for the original approval.

If the variation amounts to a different proposal that should be the subject of further submissions, a new application for a design approval would need to be made.

27. Proposed section 20 establishes a scheme for periodic returns and fees for approvals.

28. Proposed section 20A enables the transfer of an approval with the consent of IPART.

29. Proposed Division 5 (sections 20B–20K) sets out various matters relating to licences for operators of water industry infrastructure to which the Part applies and retailers of water or sewerage services provided by such infrastructure.

30. Proposed section 20B sets out the process for determination by the Minister of an application for a licence.

31. Proposed section 20C sets out the criteria for the grant of a licence. The licensee may not be an individual and must meet the requirements to be considered a suitable corporation to be granted a licence. An operator's licence must specify a class of infrastructure that may be operated under the licence. A class may be described by type, capacity or any other factor or combination of factors.

32. Proposed section 20D sets out the scheme for licence conditions. It contemplates that conditions may be imposed by the Act or the regulations or by the Minister on the grant of the licence, subsequently under this provision or as disciplinary action. The proposed section makes it an offence for a licensee to contravene the conditions.

33. Proposed section 20E imposes specific conditions on an operator's licence and gives examples of other conditions that may be imposed by the regulations or the Minister, including conditions requiring security to be given for compliance with conditions. Proposed subsection (3) states that a licensed operator must comply with the conditions of the design approval or operational approval as the case requires. This reflects that the design approval governs the construction phase while the operational approval governs the subsequent operation phase (and the design approval gives way to the subsequent operational approval).

34. Proposed section 20F imposes specific conditions on a retailer's licence and sets out examples of conditions that may be imposed by the regulations or the Minister, including a condition requiring security to be given for compliance with licence

conditions and conditions of the kind currently set out in section 13 (2) (c) of the principal Act.

35. Proposed section 20G provides that a licence remains in force until it is cancelled or the licence is surrendered with the consent of the Minister.

36. Proposed section 20H contemplates variation of the class of infrastructure that may be operated under an operator's licence on application of the licensee.

37. Proposed section 20I establishes a scheme for annual returns and fees for licences.

38. Proposed section 20J provides for surrender of licence subject to the consent of the Minister. It is contemplated that conditions may be imposed prior to surrender and, if the licensee provides an essential service, that alternative arrangements must be in place for the continuity of the service.

39. Proposed section 20K prevents a licence being transferred.

40. Proposed Division 6 (sections 20L and 20M) contains special provisions addressing risk to public health or safety.

41. Proposed section 20L empowers the Minister to give public health and safety directions to the holder of an approval or a licensee. The provision is similar to current section 18 of the principal Act.

42. Proposed section 20M imposes substantially increased penalties for an offence involving the operation of water industry infrastructure without a required approval or licence or in contravention of conditions of approval or licence if the act is intentional and the operation of the infrastructure caused actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale.

43. Proposed Division 7 (sections 20N–20U) contains enforcement provisions and provisions for the cancellation of approvals in certain circumstances.

44. Proposed section 20N is an interpretation provision defining "regulatory authority" and "statutory default". The regulatory authority is IPART in relation to approvals and the Minister in relation to licences. It should be noted that a reference to the contravention of the Act by the holder of an approval or a licensee includes contravention of a condition of the approval or licence.

45. Proposed section 20O explains that the powers to deal with statutory default are in addition to the powers to take criminal proceedings.

46. Proposed section 20P empowers the regulatory authority to issue a compliance notice to remedy or mitigate the consequences of a statutory default or to prevent the continuance or recurrence of the default. It is an offence to fail to take the action required by a compliance notice. A continuing offence is provided for by proposed section 96A.

47. Proposed section 20Q empowers the regulatory authority to apply to the Supreme Court for an injunction to prevent a statutory default or to prevent recurrence of the statutory default.

48. Proposed section 20R empowers the regulatory authority to take disciplinary action for statutory default. The types of disciplinary action that may be taken are set out in proposed subsection (3) and include monetary penalties, imposition of conditions, suspension, cancellation and disqualification. They extend to disqualification of a related corporation or a person who is a director or concerned in the management of a related corporation.

49. Proposed section 20S gives the court additional powers when imposing a penalty for a contravention of Part 2, including power to order the recovery of costs and expenses of a public authority or a victim or of the amount of the economic benefit acquired by the person or accruing as a result of the contravention. These powers are similar to those provided in the *Protection of the Environment Operations Act 1997*.

50. Proposed section 20T provides for cancellation of an approval essentially when the infrastructure is no longer to be constructed or used to provide water or sewerage services under the principal Act. There are limitations relating to continuity of any essential service. Cancellation may be accompanied by forfeiture of security if IPART considers that appropriate and may be made subject to preconditions.

51. Proposed section 20U empowers the Minister to cancel an approval in the public interest. The holder of the approval may apply to the Supreme Court for compensation. This provision equates to current section 19 of the principal Act, but has necessarily been made to apply to approvals rather than licences.

52. Proposed Division 8 (sections 20V and 20W) contains provisions for administrative review and appeal.

53. Proposed section 20V sets out the circumstances in which an applicant for or holder of an approval or licence may apply to the Civil and Administrative Tribunal for an administrative review. These decisions relate to applications and conditions.

54. Proposed section 20W sets out the circumstances in which a person may appeal to the Civil and Administrative Tribunal. These decisions relate to enforcement decisions or decisions relating to approval cancellation or forfeiture of security.

55. Proposed Division 9 (sections 20X–20Z) deals with miscellaneous matters.

56. Proposed sections 20X and 20Y deal with the mechanics of applications and notices.

57. Proposed section 20Z resolves what is to happen if the holder of an operational approval purports to appoint more than one licensed retailer for the same service in contravention of the conditions of approval (see proposed section 17 (1) (b) (ii)).

58. Schedule 1 [4] and [5] amend the penalty provisions for access regime offences. Because the amendments propose high levels of penalty consistent with other similar legislation, the penalties in the principal Act are being presented in monetary amounts. A consistent ratio of 5:1 is being introduced for offences by corporations as compared to offences by individuals.

59. Schedule 1 [6] is a technical amendment to ensure that the heading to Part 5 of the principal Act refers to the water industry market to acknowledge that the Part relates to both water and sewerage services and deals with operational and retail matters.

60. Schedule 1 [7] inserts a new Division at the beginning of Part 5 of the principal Act. The provisions in this Division replicate certain provisions that apply to public water utilities. Proposed section 46AA sets out definitions for the purpose of the Division.

61. Proposed section 46AB treats category A schemes in the same way as public water utility infrastructure in that it automatically implies a contract for connection and supply of water and sewerage services between the licensed operator and the land owner and the licensed retailer and the land owner. More than one licensed operator may be involved in the operation of a category A scheme (for example, one licensee may operate the sewage treatment plant while another operates the reticulation network). The proposed section creates an implied contract between the licensee responsible for operating the infrastructure that connects to the property, as well as an implied contract with the retailer responsible for selling services to the property owner (if these are different parties). The regulations will prescribe standard terms and conditions that will apply unless varied. The proposed section contemplates modification or exclusion of the contract by express agreement between the licensee and the customer. To ensure that prospective purchasers of land are aware of any water or sewerage services provided to the land under the principal Act, consequential amendments are included requiring that information to be disclosed in a planning certificate under section 149 of the *Environmental Planning and Assessment Act 1979* (see Schedule 2.3).

62. Proposed section 46AC sets out conditions relating to contract charges for category A schemes. It requires the charges to be published on the licensee's website and requires customers to be given at least 6 months' notice of any increase, although the Minister may reduce the period of notice on application of the licensee.

63. Proposed section 46AD provides that on a change of ownership of land the new owner becomes liable for outstanding contract charges payable to a licensee.

64. Proposed section 46AE empowers a lessee to pay outstanding charges owed to a licensee by a lessor and to recover the amount from the lessor. If, for example, water pressure has been reduced under a contract for non-payment of contract charges, this provision allows the lessee to remedy the situation.

65. Proposed section 46AF supports arrangements for the transfer of land by requiring a licensee to provide a certificate relevant to apportionment of charges for water or sewerage services between the vendor and purchaser of land.

66. Schedule 1 [8] and [9] amend section 47 of the principal Act to ensure that the requirement for internal dispute resolution matches the requirement for an ombudsman scheme. Any matter that may be taken to an ombudsman must first be subject to internal review by a licensee.

67. Schedule 1 [10] and [11] amend section 49 of the principal Act. The amendment in Schedule 1 [10] is with a view to an ombudsman scheme enabling an occupier who is a small retail customer to take a dispute to the ombudsman even if the contract for water or sewerage services is with the owner of the land. For example, an occupier who is liable to pay usage charges may wish to dispute the accuracy of metered water usage, an issue that does not impact an owner who is only paying fixed charges. The amendment in Schedule 1 [11] removes the limitation of the scheme to authorised licensed network operators since the ombudsman scheme must apply not only to

operators with a right of entry under Part 6 but operators who operate infrastructure that connects a customer's land to a category A scheme.

68. Schedule 1 [12] and [13] amend section 50 of the principal Act as a consequence of the change in terminology and the provision for an implied contract with a licensed operator in relation to the connection point on a customer's land. The amendment ensures that relevant operators are required to be members of an ombudsman scheme and that the operator is bound by determinations of the ombudsman in relation to a dispute arising under the contract.

69. Schedule 1 [14] inserts a new section 50A to require an insolvency official of a licensee to facilitate the dispute resolution process in relation to complaints against the licensee and to apply the Division to the official as if the official were the licensee.

70. Schedule 1 [15]–[17] make consequential amendments to the provisions relating to monopoly supply. The amendments are consequential on the inclusion of approvals of water industry infrastructure. This matter is also dealt with in transitional provisions. The reference to the supply of recycled water in section 51 (2) (b) of the principal Act is altered to a reference to a water service of a kind prescribed by the regulations so that the regulations can cater for changes to the legislative scheme to which the paragraph refers.

71. Schedule 1 [18] substitutes Division 3 of Part 5 of the principal Act which currently deals with retailers of last resort and introduces new last resort arrangements covering retailers and operators. Retailers and operators of last resort are referred to collectively as last resort providers. Proposed section 54 provides for designation by Ministerial order published in the Gazette of a last resort provider to take the place of an essential service provider in the event that the essential service provider is declared to have failed. The last resort provider is to be a public water utility or a licensee.

72. Proposed section 55 requires a designated last resort provider to prepare and review a contingency plan for the continuity of the essential service for approval by IPART and to conduct exercises to test the operation of the approved contingency plan as contemplated in the plan or required by IPART. Proposed subsection (3) enables a public water utility that has been designated as a last resort provider to identify the contract terms and charges that will apply to transferred customers in the event a failure is declared. For example, a public water utility may identify the contract terms and charges applicable to its own small retail customers (in connection with a nominated recycled water scheme) as the terms and charges applicable to transferred customers to whom a failed licensee previously provided a similar service. This approach enables public water utilities designated as last resort providers to extend their normal customer service systems to transferred customers. Alternatively, if no such terms or charges are identified, proposed section 57C states that the terms and charges applicable to transferred customers will be those terms and charges applied by the failed licensee.

73. Proposed section 56 requires an essential service provider and the holder of an operational approval for essential infrastructure and any other provider or last resort provider of the essential service to facilitate contingency planning by the last resort provider. A single scheme may involve multiple providers and potentially more than one last resort provider. For example, one party may provide drinking water services, a second party may provide recycled water and a third party may provide sewerage

services. While it is intended that in most cases a single last resort provider will be designated in respect of all services provided by a scheme, it is possible that one last resort provider could be designated to provide one service (for example, drinking water) while another may be designated as the last resort provider in relation to other services (for example, recycled water and sewerage services). The essential service provider is required to pay to the last resort provider the reasonable cost of compliance with section 55. If the parties cannot agree an amount, IPART is to determine the amount payable on application of the last resort provider. Proposed section 57 empowers the Minister to declare that an essential service provider has failed in certain circumstances including insolvency. The declaration must specify a date that marks the beginning of the period of the declared failure. This date is known as the transfer date. If an essential service provider operating a number of category A schemes fails, the Minister's declaration may trigger the provision of services by a number of last resort providers in different parts of the State.

74. Proposed section 57A sets out the effect of a declaration of a failure, including the last resort provider taking over responsibility for the provision of the essential service formerly provided by the essential service provider declared to have failed. Proposed subsection (3) ensures that, during a declared failure, the last resort arrangements will not be undermined by a purported agreement entered into by the holder of an operational approval for the essential infrastructure.

75. Proposed section 57B provides for the last resort provider to take over the contracts of the essential service provider that are necessary for the provision of the essential service.

76. Proposed section 57C provides for the transfer of customers from the essential service provider to the last resort provider if, following the declaration of a failure, the last resort provider is a retailer or an operator of the infrastructure that connects a category A scheme to a customer's land. Relevant contracts are implied and the proposed section identifies the relevant contract charges and conditions (including the last resort supply fee currently provided for in clause 23 of the *Water Industry Competition (General) Regulation 2008*). The charges cannot be increased under proposed Division 1AA during the failure. If the last resort provider is a licensee, the contract charges payable by transferred customers are the same as those that were payable to the failed licensee (with the exception of the transfer fee, which is a one-off fee to cover the cost of transferring customers to the last resort provider). If the last resort provider is a public water utility, the contract charges are those of the failed licensee or the standard contract charges identified in the contingency plan, whichever is greater at the time the failure is declared.

77. Proposed section 57D contains matters relevant to the provision of the essential service by the last resort provider. The proposed section entitles the last resort provider to necessary access to infrastructure, customer data systems and other property. The contingency plan may contemplate staff of the failed licensee assisting the last resort provider to provide the service. The failed licensee, the holder of the operational approval for the essential infrastructure and any other provider or last resort provider of the essential service must facilitate the provision of the essential service, comply with the contingency plan and comply with reasonable directions given by the last resort provider. An offence of obstruction of a last resort provider is proposed.

78. Proposed section 57E sets out a special obligation on the holder of an operational approval for essential infrastructure to attempt to resolve a failure as quickly as possible. It contemplates that this may be by entering into an agreement with a different licensee for the provision of the service, obtaining a licence for that purpose or selling the infrastructure and transferring the operational approval to a suitable corporation.

79. Proposed section 57F requires IPART to review a failure at least once in each 6 months and make recommendations to the Minister about how the failure may be resolved. The proposed section contemplates that the failure may be resolved through the actions of the holder of the operational approval and the replacement of the failed licensee, by the connection of affected premises to alternative infrastructure or by a public water utility providing a service under its own Act to replace the essential service.

80. Proposed section 57G empowers the Minister to make a declaration that will enable a public water utility to voluntarily or compulsorily acquire essential infrastructure and land if the Minister is satisfied that the failure should be resolved by the provision of a water or sewerage service under the utility's Act rather than the principal Act. The assimilation of the scheme for acquisition of infrastructure into the existing scheme for acquisition of land is designed to ensure that similar processes and the principles of just terms compensation apply.

81. Proposed section 57H enables the Minister to declare the end of a failure. The end date must not be earlier than 6 months after the transfer date unless the last resort provider consents to an earlier end date. In fixing the end date the Minister must consider matters of cost recovery for the last resort provider.

82. Proposed section 57I sets out the effect of a declaration of the end of the failure, including transferring customers from the last resort provider to a new licensee or public water utility, as the case may require, and providing for a new licensee to take over relevant contracts if the service is to continue to be provided under the principal Act. There is an obligation on the last resort provider, the holder of the operational approval for the essential infrastructure and any other provider or last resort provider of the essential service to facilitate this process.

83. Proposed section 57J provides immunity from liability for the last resort provider in the absence of negligence.

84. Proposed section 57K requires a last resort provider or new licensee to maintain the confidentiality of confidential or commercially sensitive information obtained under the Division.

85. Proposed section 57L contemplates a last resort provider applying to the Minister for a cost recovery scheme. It is contemplated that the scheme may provide for recovery from the failed licensee, recovery from the holder of the operational approval for the essential infrastructure or, in circumstances in which it is unlikely that all the costs can be recovered from the licensee or holder, recovery from customers or the establishment of an industry contribution scheme. The proposed section deals with the mechanics of each of those possibilities and also contemplates regulations on the topic.

86. Proposed section 57M provides the mechanism for the enforcement of obligations under the Division on a public water utility, licensee or holder of an approval.

87. Proposed section 57N provides a system for the revocation of a determination of water industry infrastructure as essential infrastructure on application to IPART by an essential service provider or last resort provider or on IPART's own initiative.

88. Proposed section 57O sets out how applications are to be made for the purposes of the Division and enables the Minister or IPART to require further information or verification of information.

89. Proposed section 57P imposes obligations on an insolvency official of an essential service provider or holder of an operational approval for essential infrastructure to facilitate compliance with the Division and continuity of the provision of the essential service. The official is to be regarded as if the official were the licensee or holder.

90. Proposed section 57Q ensures that nothing in the *Privacy and Personal Information Protection Act 1998* prevents the disclosure of customer information under the Division.

91. Schedule 1 [20] inserts a preliminary Division at the beginning of Part 6 of the principal Act which deals with work relating to water industry infrastructure. It is proposed that Part 6 continues to apply to water industry infrastructure operated under the principal Act. The amendments ensure that the Part also allows the holder of an operational approval for the infrastructure to carry out necessary work on the infrastructure. In addition, it is contemplated that the regulations may extend the application of the Part to other water industry infrastructure for which it is not necessary to have an operational approval or operator's licence. In that way, necessary work may be undertaken on the infrastructure with the benefit of the application of the Part subject to the requirements of the regulations. These provisions are designed to ensure that, while the scope of the licensing regime has been narrowed, the facilitative measures provided by the Act remain available to infrastructure that meets the applicable criteria. For example, and pending development of the regulation, it is envisaged that a low risk industrial recycling scheme will no longer require an approval or licence under the principal Act as such schemes do not pose risks to public health and are subject to regulation under other frameworks such as the *Work Health and Safety Act 2011*. Under the proposed provisions, such schemes will be able to seek a declaration to enable maintenance work etc to be undertaken under the provisions of Part 6. The criteria will be established in the regulations and it is intended that the regulations will have regard for the nature of the infrastructure and whether it confers public benefits such as reducing pressure on potable water supplies.

92. Schedule 1 [19], [21], [22] and [24] are technical amendments consequential on the insertion of the preliminary Division and introduction into the scheme of the principal Act of the requirement for the owner of water industry infrastructure to which Part 2 applies to hold an operational approval.

93. Schedule 1 [23] amends the penalty provision in section 65 of the principal Act for the reasons described in relation to the amendments to sections 42 and 43 of the principal Act.

94. Schedule 1 [25] substitutes the heading to Part 7 of the principal Act to reflect that its contents extend beyond the matter of offences to matters of enforcement generally.

95. Schedule 1 [26] is an amendment that is consequential on the insertion of Division 1AA into Part 7 by the next item.

96. Schedule 1 [27] inserts a new interpretation Division at the beginning of Part 7 of the principal Act which deals with enforcement. Proposed section 65J ensures that the Part continues to apply to a licensed operator and infrastructure operated by the licensed operator and extends the application of the Part to an operator of water industry infrastructure declared to be a WICA provider for the purposes of Part 6 of the principal Act and infrastructure to which the declaration relates.

97. Schedule 1 [28], [29], [31], [33], [34], [36] and [37] amend penalty provisions. The levels of penalty have been chosen with a view to internal consistency and relativities and external consistency with penalties for similar offences in other relevant Acts.

98. Schedule 1 [30] and [32] amend references to a licensed retail supplier and are consequential on the insertion of Division 1AA into Part 7.

99. Schedule 1 [35] amends the powers of inspectors in a material respect. The powers are extended to investigating whether there is a risk to public health or safety that may give rise to the issuing of public health and safety directions by the Minister. The amendment also ensures that the powers may be exercised to ascertain whether a person is committing or is about to commit an offence, rather than just whether a person has committed an offence.

100. Schedule 1 [38] inserts a new Division at the beginning of Part 8 of the principal Act which deals with the functions of IPART. The proposed Division deals with the register currently maintained by IPART for the purposes of the principal Act. The requirements are extended to cover approvals as well as licences and generally to reflect the proposed provisions.

101. Schedule 1 [39] is a technical amendment to the heading to Division 1 of Part 8 of the principal Act to reflect the expansion of IPART's responsibilities under the Part.

102. Schedule 1 [40] substitutes section 85 of the principal Act and expands the functions of IPART to include review of compliance with approval conditions and the continued relevance and appropriateness of the arrangements for last resort providers.

103. Schedule 1 [41] inserts a new requirement into section 86 of the principal Act to provide for recovery of the costs of the performance of IPART's functions from the holder of an approval equivalent to the requirement that applies to licensees.

104. Schedule 1 [42] is a consequential amendment.

105. Schedule 1 [43] enables IPART to direct approval holders to keep records and furnish information.

106. Schedule 1 [44], [45] and [47] are technical drafting amendments. Material that was in section 88 of the principal Act is more appropriately distributed among relevant

provisions and the offences relating to the provision of false or misleading information set out in Part 5A of the *Crimes Act 1900* are relied on.

107. Schedule 1 [46] amends the requirement for IPART to provide an annual report to take account of the proposed expansion of its functions.

108. Schedule 1 [48] inserts a new section into Part 9 (Miscellaneous) of the principal Act requiring timely determination of applications. The regulations may set out required time frames for the determination of applications by IPART and, if not met, the applicant may apply to the Minister for a direction to IPART requiring the decision to be made within a time fixed by the Minister.

109. Schedule 1 [49]–[51] remove unnecessary references to the Director-General who does not have particular powers under the principal Act.

110. Schedule 1 [52] provides for continuing offences. The daily penalty imposed is one-tenth of the maximum penalty for the offence.

111. Schedule 1 [53] amends the offences identified as offences attracting executive liability to cover offences of not having a required approval or licence or contravening conditions of an approval or licence. The reference to section 71 is removed since that section is just one of many that relate to interference with water industry infrastructure.

112. Schedule 1 [54] inserts a Corporations Act displacement provision into the principal Act. This allows the proposed provisions relating to obligations and rights of insolvency officials to have full effect and take precedence over requirements of the Corporations legislation.

113. Schedule 1 [55] is a technical drafting amendment designed to achieve consistency and does not make a substantive change to the law.

114. Schedule 1 [56] and [57] are consequential amendments ensuring that section 99 of the principal Act dealing with the recovery of monetary penalties applies to approval holders as well as licensees.

115. Schedule 1 [58] is a technical amendment updating section 100 of the principal Act which deals with evidentiary certificates.

116. Schedule 1 [59] draws various regulation-making powers together and allows the regulations to make exemptions as necessary and to provide for the payment of fees by instalments. The level of penalty that may be imposed by the regulations has been increased to reflect the proposed increases to penalties in the principal Act.

117. Schedule 1 [60] substitutes section 104 of the principal Act so as to require the effect of the proposed amendments to be reviewed and a report tabled in Parliament.

118. Schedule 1 [61] is a consequential amendment to the regulation-making powers set out in Schedule 2 to the principal Act designed to reflect that certain matters may be made the responsibility of an approval holder rather than a licensed operator.

119. Schedule 1 [62] inserts a regulation-making power in relation to social programs, currently provided under section 13 (3) of the principal Act.

120. Schedule 1 [63] inserts a regulation-making power to deal with matters relating to connecting developments to water industry infrastructure operated under the principal Act. This amendment and the amendment to the *Environmental Planning and Assessment Act 1979* are designed to apply an equivalent compliance certificate scheme to that which applies to the infrastructure of the Sydney and Hunter water authorities to infrastructure operated under the principal Act.

121. Schedule 1 [64] and [65] deal with transitional issues. Proposed Part 4 of Schedule 4 provides that all existing licences are to be brought over into the new scheme. Consequently, it is necessary for operational approvals to be granted to the owner of the infrastructure and for appropriate licensees and persons listed on licences under the current scheme to be granted new licences. This process is to happen without application or fees but relevant persons may be required to provide necessary information to IPART verified as IPART requires. Licensees and persons listed in licences who are not granted licences under this scheme are given 28 days following commencement to apply for a licence without payment of an application fee.

122. Proposed clause 10 (2) is included to allow IPART an appropriate time frame within which to bring schemes currently run by metropolitan councils and other schemes within the ambit of the principal Act.

123. Proposed clause 11 converts current contracts between licensees and customers into implied contracts as provided for in proposed Division 1AA of Part 5.

124. Proposed clause 12 converts the current monopoly supplier declaration into a form that suits the requirements of the proposed scheme.

125. Schedule 1 [66]–[70] make necessary modifications to the Dictionary of the principal Act. The definition of *owner of water industry infrastructure* means that a long term lessee of water industry infrastructure is regarded as the owner for the purposes of the scheme. This is designed to accommodate arrangements such as that pertaining to the Sydney desalination plant. The definition of *providing an essential service* is designed to simplify the language in proposed Division 3 of Part 5 by allowing the expression to be used both in relation to the operation of essential infrastructure and the sale of an essential service. The definition of *public water utility* ensures that there is an explanation of what is meant by the utility's Act and the utility's area of operations for each public water utility. Metropolitan councils (to the extent that their council areas are in the areas covered by the Sydney and Hunter water authorities) are removed from the definition so that the principal Act will apply to infrastructure operated by or on behalf of metropolitan councils. The definition of *small retail customer premises* is used in determining what constitutes a category A scheme. A level of flexibility is introduced by allowing the regulations to refine this definition.

126. Schedule 1 [71] makes global amendments to the principal Act to accommodate the proposed changes in terminology.

127. Schedule 2.1 amends the *Energy and Utilities Administration Act 1987* to update terminology.

128. Schedule 2.2 amends the *Environmental Planning and Assessment Act 1979* to extend the scheme requiring a developer to obtain a compliance certificate from a public water

utility if it is proposed that a subdivision be connected to infrastructure of the utility to infrastructure operated under the principal Act.

129. Schedule 2.3 amends the *Environmental Planning and Assessment Regulation 2000* to ensure that a planning certificate for land indicates that water or sewerage services are provided to the land under the principal Act if that is the case.

130. Schedule 2.4 amends the *Fluoridation of Public Water Supplies Act 1957* to update terminology.

131. Schedule 2.5 amends the *Hunter Water Act 1991* to update terminology and because the matter currently dealt with in section 36 (4) of that Act relating to contracts with Hunter Water Corporation as a last resort provider is proposed to be dealt with in the provisions dealing with last resort providers in the principal Act.

132. Schedule 2.6 amends the *Local Government Act 1993* to update terminology and because the matter currently dealt with in section 553A (2) of that Act relating to contracts with a last resort provider is proposed to be dealt with in the provisions dealing with last resort providers in the *principal Act*. The amendment to section 124 empowers councils to require premises to be connected to a water or sewerage system without reference to council ownership of the system.

133. Schedule 2.7 amends the *Local Government (General) Regulation 2005* to avoid duplication and ensure that activities carried out under an approval or licence under the principal Act do not require an approval under section 68 of the *Local Government Act 1993*.

134. Schedule 2.8 amends the *Plumbing and Drainage Act 2011* to update terminology.

135. Schedule 2.9 amends the *Public Health Act 2010* to update terminology.

136. Schedule 2.10 amends the *State Environmental Planning Policy (Infrastructure) 2007* to link the authorisation for certain water industry infrastructure to be developed without consent on land within a prescribed zone to the holders of design approvals rather than licensees.

137. Schedule 2.11 amends the *Sydney Water Act 1994* to update terminology and because the matter currently dealt with in section 55 (3B) of that Act relating to contracts with Sydney Water Corporation as a last resort provider is proposed to be dealt with in the provisions dealing with last resort providers in the principal Act.

138. Schedule 2.12 amends the *Sydney Water Catchment Management Act 1998* to update terminology.

139. Schedule 2.13 amends the *Water Management Act 2000* to update terminology.

ISSUES CONSIDERED BY COMMITTEE

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

Double Punishment

140. Proposed section 20O(1) provides that a regulatory authority (either IPART or the relevant Minister) may exercise its powers pertaining to the administration of licences

where there has been a statutory default. A statutory default occurs when either the holder of an approval or a licensee contravenes the Act or regulations. These powers can be applied notwithstanding whether criminal proceedings have already commenced as a result of the statutory default, and notwithstanding whether a penalty has already been imposed as a result.

141. However, proposed section 20O(2) provides that a regulatory authority must, in imposing a monetary penalty, take into account any fine that has already been imposed through criminal proceedings.

142. The Committee notes that the effect of these provisions may be that a penalty is incurred twice for the same statutory default, both by the Court through criminal proceedings, and the relevant regulatory authority through administrative processes. Although the regulatory authority must have regard to any fine already incurred, there is no requirement for the regulatory authority to subsequently impose a lesser fine as a result.

The Committee notes that the Bill provides that a regulatory authority may impose administrative penalties for statutory defaults, notwithstanding that a penalty may have already been imposed for the same default as a result of criminal proceedings. The Committee notes that this could amount to a double punishment for fundamentally the same statutory default. The Committee makes no further comment.

Privacy

143. Proposed section 57Q of the Bill provides that nothing in the *Privacy and Personal Information Protection Act 1998* prevents the disclosure of customer information under the Division pertaining to retailers of last resort.

144. The Committee would ordinarily comment with respect to blanket exemptions from the *Privacy and Personal Information Protection Act 1998.* However, the Committee also notes that this Division relates to instances where there has been a water supply failure or sewerage service failure, and new retailers 'of last resort' need to be commissioned to provide immediate water supply and sewerage services to the existing customers of failed suppliers. In this respect, customer details may need to be disclosed as a matter of urgency and without seeking prior customer approval.

The Committee notes the partial exemptions to the *Privacy and Personal Information Protection Act 1998* provided under this Bill. However, given the circumstances where a retailer 'of last resort' needs to facilitate water supply and sewerage services to existing customers of failed suppliers, the Committee does not consider these exemptions to be unreasonable in the circumstances.

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

Commencement by Proclamation

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

The Committee prefers legislation of this kind, which impacts on rights and liberties, to commence on a fixed date or assent, not by proclamation.

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.