



Legislation Review Committee

LEGISLATION REVIEW DIGEST

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

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Membership

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Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations

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

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

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

Guide to the Digest

COMMENT ON BILLS

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

Ministerial Correspondence – Bills previously considered

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

COMMENT ON REGULATIONS

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

APPENDIX 1: INDEX OF MINISTERIAL CORRESPONDENCE ON BILLS

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

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

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

Conclusions

PART ONE - BILLS

1. BAIL AMENDMENT (ENFORCEMENT CONDITIONS) BILL 2012

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

Presumption of innocence

The Committee will always seek to comment on any amendments to the laws governing bail that will effectively burden bail applicants. The Bill may infringe on the applicant's freedom of movement in authorising the enforcement of conditions, as the bail applicant is being punished without a conviction. However the Committee notes the purpose of allowing such conditions is to increase the circumstances where bail can be granted whilst ensuring the rights and safety of the victim and the community are considered. As such, the Committee makes no adverse comment.

2. BIOFUELS FURTHER AMENDMENT BILL 2012

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

Excessive Punishment

Whilst the Committee will always be concerned by significant increases in the penalties for offences, the Committee understands that the purpose of the Bill is to increase the opportunities for businesses that cannot afford to meet biofuel requirements to receive an exemption. As such, the Committee makes no further comment.

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

Exemptions

The Committee is keen to comment where exemptions from the law exist for certain persons. However, the Committee understands the Bill establishes an expert panel which will analyse an application for exemptions. As such, the Committee makes no further comment.

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

Commencement by proclamation

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

3. CANCER INSTITUTE (NSW) AMENDMENT BILL 2012

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

Employment

The Committee will always seek to comment on legislation which permits the automatic transfer of a person's employment without their consent. However, given the purposes of the Bill, and that the clause is machinery in nature, the Committee makes no further comment.

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

Commencement by proclamation

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

4. DRUG AND ALCOHOL TREATMENT AMENDMENT (REHABILITATION OF PERSONS WITH SEVERE SUBSTANCE DEPENDENCE) BILL 2012*

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

Arbitrary detention, consent to medical procedure, physical integrity

The Committee will always be concerned by involuntary detention and medical treatment of individuals. However the Committee notes the purpose of the Act and the inclusion of independent oversight by way of judicial approval and therefore makes no further comment.

5. ELECTION FUNDING, EXPENDITURE AND DISCLOSURES FURTHER AMENDMENT BILL 2012; PARLIAMENTARY ELECTORATES AND ELECTIONS AMENDMENT (REDISTRIBUTIONS) BILL 2012

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

6. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2012

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

Intellectual property

The Committee notes that the practical effect of the inclusion of section 158A may be that an architect's plans are published and made public despite any copyright the architect may wish to assert. However, given the public policy objectives of the Bill, the Committee makes no further comment in relation to this issue.

Confidentiality

The Committee notes that the purpose of section 33 is to prevent the misuse of information during the development of growth centres in New South Wales. The Committee is concerned that the amendment to section 33 – outlining that a breach of misuse of information clauses are not governed by section 33 if they relate to Landcom - may have the effect that confidential information may be compromised. However, the Committee notes that Landcom is a public authority and notes that it is not unreasonable for the Government to make arrangements that may be to the advantage of public authorities. As such, the Committee makes no further comment in relation to this issue.

Presumption of innocence

The Committee notes that the practical effect of requiring a Tribunal to take into consideration any previous disciplinary action taken may impact on the presumption of innocence of the

accreditation holder. However, given the public policy objectives of the Bill, the Committee considers this to be reasonable in the circumstances and makes no further comment on this issue.

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

Ill and wide defined power

The Committee considers that providing a power in the regulations to an undefined person or body to determine the amount of monetary contributions or levies without providing any guidance in the principal legislation as to the reasonableness of such contributions or levies amounts to an ill and wide defined power. However, given the public policy considerations that inform the Bill, the Committee makes no further comment in relation to this issue.

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative requirements involved in commencing various aspects of this Bill, and makes no further comment on this issue.

7. FORESTRY BILL 2012

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

Property

The Committee notes that the Bill may impact upon property rights. The Committee notes the purpose of the Bill and makes no further comment.

Employment

The Committee notes that State employees may have a preference to work for the agency for which they applied to work, or a general preference to keep the terms and conditions of employment under which they applied to work. Given the objects of this Bill, the Committee makes no further comment on this issue.

Denial of compensation

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

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

Commencement by proclamation

The Committee considers that allowing time for the formation of the new Forestry Corporation of New South Wales is an appropriate reason to delay the commencement of the Bill.

8. GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT (REMOVAL OF APPLICATION FEE) BILL 2012*

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

9. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT (REGISTER OF DISCLOSURES BY MEMBERS) BILL 2012

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

Retrospectivity

The Committee notes the retrospective effect of the provisions within the Bill, however given the purpose of the Bill makes no further comment.

10. LIQUOR AMENDMENT (KINGS CROSS PLAN OF MANAGEMENT) BILL 2012

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

Denial of compensation

The Committee is concerned that removing a right to compensation may impact on the rights and liberties of individuals. As it is not immediately apparent that individual rights and liberties would be affected, the Committee makes no further comment on this issue.

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

Henry VIII clause

The Committee considers that the inclusion of a clause that enables the amendment of legislation through regulation to be of great concern. However, as Schedule 2 defines the precinct of Kings Cross, the Committee does not consider this particular use of a 'Henry VIII clause' to be of concern and makes no further comment on this issue.

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee notes that as this Bill involves an all of government response, there may be some administrative convenience to commencing sections of the Bill by proclamation. The Committee makes no further comment on this issue.

11. PETROLEUM (ONSHORE) AMENDMENT (ROYALTIES AND PENALTIES) BILL 2012

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

Indictable offences considered summarily

The Committee is always concerned when indictable offences may be considered summarily. However, the Committee also notes that either a prosecutor or the person charged may elect for the matter not to be heard summarily. As such, the Committee makes no further comment in relation to this issue.

Property

The Committee is concerned that the Bill introduces onerous penalties in relation to the activities on privately owned land. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.

Excessive punishment

The Committee is concerned that individuals may be fined up to \$220,000 for activities undertaken on private property. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.

Freedom of speech

The Committee notes that including penalties of up to \$220,000 in relation to obstructing a person exercising functions under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* may impact on the ability of an individual to protest, and therefore on their right to freedom of speech. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.

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

Commencement by proclamation

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative requirements involved in commencing various aspects of this Bill, and makes no further comment on this issue.

Provides for a royalty to be set by regulation

The Committee considers that the determination of the rate of a royalty payable is a matter that may be properly included in legislation, rather than outlined in the regulations. The Committee also notes that in this instance, the legislation provides at Schedule 1.2 that the regulation be amended to prescribe the annual rate of royalty as 10 per cent. The Committee is pleased that the amendment of the regulation is outlined in the legislation for the consideration of Parliament.

12. ROAD TRANSPORT (GENERAL) AMENDMENT (PRIVATE CAR PARKS) BILL 2012

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

Retrospectivity

The Committee notes the retrospective effect of provisions in the Bill as they relate to certain preliminary discovery applications, however given the purpose of the Bill makes no further comment.

PART TWO - REGULATIONS

1. CRIME COMMISSION REGULATION 2012

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

Privacy

The Committee notes that the powers of the Commissioner as outlined in clauses 4, 5 and 6 of the regulation impact on an individual's right to privacy. The Committee notes that the disclosure of information under clause 4 is to include a statement indicating that the affected individual consents to the conduct of inquiries. Therefore, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated

with duties performed by such officers, the Committee makes no further comment in relation to this issue.

Freedom of association / Presumption of innocence

The Committee notes that requiring an officer, or an applicant for the position of officer, of the Crime Commission to declare their association with individuals may impact on their freedom of association. The Committee also notes that the term 'reputed criminals' may be incompatible with the presumption of innocence. However, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated with duties performed by such officers, the Committee makes no further comment in relation to this issue.

2. WATER MANAGEMENT (GENERAL) AMENDMENT (LACHLAN UNREGULATED AND ALLUVIAL WATER SOURCES WATER SHARING PLAN) REGULATION 2012

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

Rule of law

The Committee notes that the effect of the regulation is to amend the principal Act. The Committee also notes that clause 10 of Schedule 6A of the Act provides the regulations with the power to amend Schedule 6A. The Committee notes that changes to legislation are more appropriately achieved by way of an amending Act, rather than by regulation. However, given the previous advice provided to the Committee by the Minister dated 29 May 2012 (item 2 of Appendix 2 of this Digest) in relation to this issue, the Committee makes no further comment on this regulation.

Part One - Bills

1. Bail Amendment (Enforcement Conditions) Bill 2012

Date introduced	24 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Minister for Police

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Bail Act 1978* to enable a court, when granting bail to an accused person, to impose a bail condition (an enforcement condition) that requires the accused person to comply, while on bail, with specified kinds of directions that are given by police officers for the purpose of monitoring or enforcing compliance with another bail condition. For example, an enforcement condition may require an accused person, who is subject to another bail condition that requires the accused person to refrain from consuming drugs or alcohol while on bail, to undergo testing for drugs or alcohol as directed by a police officer.

BACKGROUND

2. The Minister for Police, the Hon. Michael Gallagher MLC, stated in the Second Reading Speech for the Bill that the amendments were:

being made in response to the recent decision of the Supreme Court in *Lawson v Dunlevy*. In that matter the accused had been granted bail which included a condition that he abstain from alcohol. A further condition had been imposed requiring that the accused submit to a breath test, as directed by police, to check his compliance with the abstinence condition. On appeal the Supreme Court held that the breath test condition was not lawful under the current conditions of the Bail Act as it was inconsistent with the purposes for which bail conditions can be imposed and more onerous than required by the circumstances. Whilst it only considered the particular breath test condition before it, the judgement of the court made it clear that all enforcement conditions are unlawful under the current terms of the Act.

3. According to the Minister for Police,

enforcement conditions are a particularly useful tool for monitoring and enforcing compliance with bail, particularly for high-risk accused persons. They ensure that police can take steps to verify that an accused is complying with their bail conditions by, for example, directing the accused to present at the front door of their home to check that they are complying with a curfew condition.

OUTLINE OF PROVISIONS

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

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

Schedule 1 Amendment of Bail Act 1978 No 161

6. Schedule 1 [5] enables a court to impose an enforcement condition when granting bail to an accused person. An enforcement condition is a condition that requires the accused person to comply, while at liberty on bail, with one or more specified kinds of directions that are given by police officers for the purpose of monitoring or enforcing compliance with another bail condition (the underlying bail condition).
7. An enforcement condition is to specify the kinds of directions that may be given to the accused person and the circumstances in which each kind of direction may be given (in a manner that ensures the compliance with the condition is not unduly onerous).
8. An enforcement condition may be imposed only if the court considers it reasonable and necessary in the circumstances, having regard to the history of the accused person, the likelihood or risk of the accused person committing further offences while on bail and the extent to which compliance with a direction of a kind specified in the condition may unreasonably affect persons other than the accused person.
9. A police officer may give a direction to an accused person in the circumstances specified in the enforcement condition or at any other time the police officer has a reasonable suspicion that the accused person has contravened the underlying bail condition.
10. Currently, bail conditions may only be imposed for certain purposes, including promoting effective law enforcement, the protection and welfare of any specially affected person or the community and reducing the likelihood of future offences being committed by promoting the treatment or rehabilitation of an accused person.
11. Schedule 1 [4] provides that an enforcement condition may be imposed on an accused person for the purpose of monitoring or enforcing the accused person's compliance with an underlying bail condition imposed on the accused person for one of those existing purposes.
12. Schedule 1 [3] makes it clear that the criteria to be taken into account when determining whether to impose an enforcement condition are additional to the existing criteria to be considered by a court in determining whether to grant bail to an accused person.
13. Schedule 1 [1], [2] and [6] are consequential amendments.

ISSUES CONSIDERED BY COMMITTEE

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

Presumption of innocence

14. The Bill authorises a court to impose enforceable conditions on bail applicants when granting bail.

The Committee will always seek to comment on any amendments to the laws governing bail that will effectively burden bail applicants. The Bill may infringe on the applicant's freedom of movement in authorising the enforcement of

conditions, as the bail applicant is being punished without a conviction. However the Committee notes the purpose of allowing such conditions is to increase the circumstances where bail can be granted whilst ensuring the rights and safety of the victim and the community are considered. As such, the Committee makes no adverse comment.

2. Biofuels Further Amendment Bill 2012

Date introduced	24 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources

PURPOSE AND DESCRIPTION

1. The object of this Bill is to make amendments to the *Biofuels Act 2007* (the Act) and the *Biofuels Regulation 2007* (the Regulation) as follows:
 - (a) to make clear how exemptions from the minimum biofuel requirements under the Act are to be applied for, granted, varied and revoked,
 - (b) to increase the maximum penalties for certain offences under the Act and Regulation,
 - (c) to clarify the powers of investigators in administering and enforcing the Act and Regulation,
 - (d) to modify the constitution and procedure of the Expert Panel under the Act,
 - (e) to provide that proceedings for an offence against the Act or the Regulation must be commenced within 2 years of the date of the alleged offence,
 - (f) to make other amendments of a minor, savings or transitional nature.

BACKGROUND

2. In March 2012, the Independent Pricing and Regulatory Tribunal (IPART) published its report, *Ethanol Supply and Demand in New South Wales*. IPART found that there is sufficient supply in New South Wales to meet the 6 per cent ethanol mandate but that there will not be a sufficient demand to achieve it.
3. In the Second Reading Speech of the Bill, the Minister for Resources, stated:

that volume fuel sellers can influence, but not control, the product choices of their customers. As such, a fair, workable and enforceable framework for granting exemptions to the mandate is required.

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.

Schedule 1 Amendment of Biofuels Act 2007 No 23

Amendments relating to exemptions from minimum biofuel requirements

6. Schedule 1 [5] amends the provision that empowers the Minister for Resources and Energy (the Minister) to grant an exemption from the minimum biofuel requirements under the Act. The amendment:
 - (a) provides for an additional ground for exemption, being that the Minister is satisfied that the applicant for the exemption has taken, is taking or will take all reasonable steps to comply with the requirement, and
 - (b) provides that the Minister may grant an exemption if the Minister is satisfied that one or more of the specified grounds exist and that those grounds, separately or in combination, justify the grant of the exemption.
7. Schedule 2 [2] makes a consequential amendment.
8. Schedule 1 [7] makes it an offence to contravene a condition of such an exemption.
9. The maximum penalty for the offence is 500 penalty units (currently \$55,000) in the case of a first offence or 5,000 penalty units (currently \$550,000) in the case of a second or subsequent offence.
10. Schedule 1 [6] and [8] make amendments to the exemption provisions:
 - (a) to make it clear that the Minister is not to grant an exemption or vary or revoke an exemption unless the Minister has consulted the Expert Panel and has considered any advice of the Panel on the proposed grant, variation or revocation, and
 - (b) to clarify the general operation of those exemptions, and
 - (c) to provide that regulations may make provision for or with respect to applications for exemptions.
11. Schedule 2 [5] amends the Regulation to provide that applications for exemptions are:
 - (a) to be made in the manner and form approved by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services, and
 - (b) to be accompanied by the documents specified by that Director-General.

Amendments relating to powers of investigators

12. Schedule 1 [10], [11] and [13] make amendments to provide that:
 - (a) the powers of investigators under the Act to require the production of certain information, records or evidence may be exercised in relation to persons that the investigator reasonably believes have supplied a volume fuel seller with ethanol, biodiesel, petrol or diesel fuel, and
 - (b) the powers of investigators under the Act to enter and inspect certain premises may be exercised in relation to premises that the investigator reasonably believes are used

for the conduct of a business by a person whom the investigator reasonably believes has supplied a volume fuel seller with ethanol, biodiesel, petrol or diesel fuel, and

- (c) while on premises that an investigator has entered in the exercise of such a power, the investigator may take for analysis or examination samples of ethanol, biodiesel, petrol or diesel fuel.

- 13. Schedule 1 [9] and [12] make law revision amendments.
- 14. Schedule 1 [2] inserts a definition as a consequential amendment.

Amendments relating to the Expert Panel

- 15. Schedule 1 [14] amends the provision establishing the Expert Panel to take account of changes to the structure of the Public Service.
- 16. Schedule 1 [15] amends that provision to provide that the Expert Panel may include up to 3 persons appointed by the Minister who have recent experience or expertise in the petroleum or biofuels industry.
- 17. Schedule 1 [21] inserts a Schedule into the Act containing provisions dealing with the constitution and procedure of the Expert Panel.
- 18. Schedule 1 [16] and [17] make consequential amendments.

Amendments relating to offences

- 19. Schedule 1 [3] and [4] increase the maximum penalties for the offences under sections 10 (failure to comply with minimum biofuel requirements) and 13 (failure to furnish returns or keep records) from 100 penalty units (currently \$11,000) in the case of a first offence or 1,000 penalty units (currently \$110,000) in the case of a second or subsequent offence to 500 penalty units (currently \$55,000) in the case of a first offence or 5,000 penalty units (currently \$550,000) in the case of a second or subsequent offence. Schedule 2 [6] makes corresponding increases to the penalty notice amounts in the schedule of penalty notice offences to the Regulation.
- 20. Schedule 1 [18] increases the maximum monetary penalty that the Local Court may impose if dealing with an offence under the Act or the regulations under the Act from 100 penalty units (currently \$11,000) in the case of a first offence to 500 penalty units (currently \$55,000).
- 21. Schedule 1 [19] provides that proceedings for offences against the Act or the regulations must be commenced within 2 years of the date of the alleged offence (rather than within the 6 month limit that would otherwise apply).
- 22. Schedule 2 [3] also amends the Regulation to increase the maximum penalty for the offence of engaging in the business of a volume fuel seller without being registered from 10 penalty units (currently \$1,100) to 100 penalty units (currently \$11,000).

Other amendments

- 23. Schedule 1 [1] makes amendments to update certain references.
- 24. Schedule 1 [20] makes an amendment of a savings and transitional nature.

Schedule 2 Amendment of Biofuels Regulation 2007

Amendment relating to reasonable steps for compliance with volumetric biofuel requirement

25. The Act provides for a defence to a prosecution for a failure to comply with a minimum biofuel requirement under the Act if the defendant proves that the defendant took all reasonable steps to comply with the requirement—section 10 (2) of the Act. Section 10 (3) provides that the regulations under the Act may prescribe actions the taking of which by a volume fuel seller will constitute the taking of reasonable steps to comply with a biofuel requirement.
26. Schedule 2 [1] provides for an additional action by a volume fuel seller to constitute the taking of those reasonable steps, being the taking of all reasonable action (on a continuing basis) to ensure that all E10 sold by the volume fuel seller contains at least 9% ethanol.

Amendments relating to registration of volume fuel sellers

27. Schedule 2 [4] makes it an offence for a person to contravene a condition of registration as a volume fuel seller. The offence carries a maximum penalty of 100 penalty units (currently \$11,000).
28. Schedule 2 [7] prescribes the two new offences as penalty notice offences, being the offence of engaging in the business of a volume fuel seller without being registered and the proposed offence of contravening a condition of registration as a volume fuel seller. The penalty notice amount is to be \$1,100.

ISSUES CONSIDERED BY COMMITTEE

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

Excessive Punishment

29. The Bill increases the penalty for s10, s13, and Schedule 1 offences fivefold and the penalty for clause 9A offences tenfold.

Whilst the Committee will always be concerned by significant increases in the penalties for offences, the Committee understands that the purpose of the Bill is to increase the opportunities for businesses that cannot afford to meet biofuel requirements to receive an exemption. As such, the Committee makes no further comment.

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

Exemptions

30. The Bill provides the Minister with the power to exempt certain persons from adhering to the Act.

The Committee is keen to comment where exemptions from the law exist for certain persons. However, the Committee understands the Bill establishes an expert panel which will analyse an application for exemptions. As such, the Committee makes no further comment.

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

Commencement by proclamation

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

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

3. Cancer Institute (NSW) Amendment Bill 2012

Date introduced	23 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Minister for Health

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Cancer Institute (NSW) Act 2003* (the Act) to make the provisions dealing with the constitution and governance of the Cancer Institute (NSW) consistent with similar provisions in the *Health Services Act 1997* that deal with board governed statutory health corporations.

BACKGROUND

2. The Cancer Institute (NSW) is an independent health entity established in 2003 with the aim of enhancing the care and treatment of persons with cancer and research into cancer. The Institute is governed by the *Cancer Institute (NSW) Act 2003*.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Cancer Institute (NSW) Act 2003 No 14

5. Schedule 1 [2], [3], [5] and [10] amend the provisions of the Act dealing with the constitution and governance of the Cancer Institute (NSW) to make them consistent with the provisions dealing with the constitution and governance of board governed statutory health corporations set out in Division 1 of Part 2 of Chapter 4 of the Health Services Act 1997 and Schedule 5 to that Act.
6. Schedule 1 [1] and [4] make consequential amendments.
7. Schedule 1 [9] removes certain spent transitional provisions relating to the New South Wales Cancer Council.
8. Schedule 1 [11] contains certain savings and transitional provisions. It includes provisions that save the appointments of current members of the Board of the Cancer Institute (NSW), saves the appointment and employment of the current Chief Cancer Officer and transfers the staff of the Cancer Institute (NSW) from employment within the Government Service under Chapter 1A of the *Public Sector Employment and Management Act 2002* to employment within the NSW Health Service under Part 1 of Chapter 9 of the *Health Services Act 1997*. The amendment and Schedule 1 [9] also

move provisions that enable regulations of a savings or transitional nature to be made from the main body of the Act to a schedule to the Act.

9. Schedule 1 [6] makes a consequential amendment.
10. Schedule 1 [8] provides that Chapter 10 (Administration of the public health system) of the *Health Services Act 1997* extends to the Cancer Institute (NSW) as if it were a statutory health corporation.
11. Schedule 1 [7] makes a consequential repeal of a provision the subject matter of which is dealt with in Chapter 10 of the *Health Services Act 1997*.

Schedule 2 Amendment of other Acts

Amendment of Health Services Act 1997

12. Schedule 2.1 [1] enables the Government of New South Wales to employ staff under Part 1 of Chapter 9 of the *Health Services Act 1997* to enable the Cancer Institute (NSW) to exercise its functions under the Act or any other Act.
13. Schedule 2.1 [2] makes a consequential amendment.

Amendment of Public Sector Employment and Management Act 2002

14. Schedule 2.2 makes a consequential repeal.

ISSUES CONSIDERED BY COMMITTEE

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

Employment

15. Schedule 1, Clause 11 of the Bill permits the transfer of persons employed under the *Public Sector Employment and Management Act 2002* to employment of the NSW Health Service under the *Health Services Act 1997*.

The Committee will always seek to comment on legislation which permits the automatic transfer of a person's employment without their consent. However, given the purposes of the Bill, and that the clause is machinery in nature, the Committee makes no further comment.

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

Commencement by proclamation

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

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

4. Drug and Alcohol Treatment Amendment (Rehabilitation of Persons with Severe Substance Dependence) Bill 2012*

Date introduced	25 October 2012
House introduced	Legislative Council
Member with carriage	The Hon. Rev. Fred Nile MLC
	*Private Member Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Drug and Alcohol Treatment Act 2007* (the Act) to further provide for the involuntary rehabilitative care of persons with severe substance dependence:
 - (a) by providing a new option for rehabilitation, so that, instead of being detained, persons with severe substance dependence can (during a trial-period) agree to undergo out-patient treatment, including having naltrexone implanted under their skin and undergoing counselling for relapse prevention and other health issues, and
 - (b) by amending the procedure for assessing persons for involuntary treatment, including by adding to the persons who can request an assessment and to the circumstances in which a person can be involuntarily treated, and
 - (c) by amending the procedure for the detention and transportation of persons for the purposes of involuntary rehabilitative treatment and for the conduct of the subsequent treatment of those persons, and
 - (d) by adding to the rights of detained dependent persons, including their right to plan their treatment and their rights to competent and reasonable care, to legal representation and to information about these and other rights, and
 - (e) by further restricting the conduct of detained dependent persons (including by prohibiting the abuse or possession of addictive substances, including liquor or drugs, during the period of treatment), and
 - (f) by increasing the maximum time for which a person may be involuntarily detained for treatment (from 28 days to 90 days) and by removing the ability to extend that time, and
 - (g) by providing for the post-rehabilitative care of persons who were formerly detained or treated (which may involve a second detention or treatment if substance use continues), and

- (h) by applying the Act to young people and specifying the rights of their parents or guardians.

BACKGROUND

- 2. The *Drug and Alcohol Treatment Act 2007* provided the legal basis for a two-year trial of short-term involuntary care and treatment during which this group of persons with severe substance dependence would undergo detoxification to rebuild their health and be linked in a planned and considered way to longer-term rehabilitation and support.
- 3. The *Drug and Alcohol Treatment Act 2007* was introduced in response to the 2003 Summit on Alcohol Abuse that recommended an inquiry into the *Inebriates Act 1912* in order to better reflect modern medical practice treatment options and legal safeguards.
- 4. The Legislative Council's Standing Committee on Social Issues undertook an Inquiry and reported on the *Inebriates Act 1912* in August 2004. The Standing Committee on Social Issues recommended that the Government repeal the *Inebriates Act*. Whilst the *Inebriates Act* still remains in force, there are now very few persons who are treated against their will under the *Inebriates Act*.

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 3 months after the date of assent to the proposed Act.

Schedule 1 Amendment of Drug and Alcohol Treatment Act 2007 No 7

Objects of Act

- 7. Schedule 1 [1] updates the objects of the Act to clarify that involuntary treatment provided under the Act is rehabilitative treatment.
- 8. Schedule 1 [2] includes in the objects of the Act the objects of facilitating post-rehabilitative care and assistance of persons who were dependent persons so as to help the re-integration of those persons into the workforce and society and granting the police, and the staff of treatment centres, the necessary powers to achieve that object and the other objects.

Application of Act to minors

- 9. Schedule 1 [4] provides for the Act to apply to any person who is 16 years old or older (at present it applies only to persons who are 18 years old or older).

Declaration of premises as treatment centres

- 10. Schedule 1 [12] provides that the Director-General of the Ministry of Health must not declare any premises to be a treatment centre unless the Director-General is satisfied that its facilities for rehabilitation are safe and adequate.

Assessment of persons with suspected severe substance dependence

- 11. Schedule 1 [13] specifies (in proposed section 9) the persons who may request an accredited medical practitioner to assess a person for treatment under the Act, if they

reasonably suspect that the person has a severe substance dependence (at present, only a medical practitioner can request an assessment).

12. Schedule 1 [13] also restates the procedure for assessing persons for treatment, including by inserting new provisions (in proposed section 9A (3) and (4)) which change the criteria that must be satisfied before a dependency certificate can be issued, so that:
 - (a) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person is satisfied that the care, treatment or control of the person is necessary to protect the person from harm to his or her own physical or mental health, to protect others or to remove the risk of the person committing an offence due to the person's substance dependence (whereas, at present, the certificate may only be issued if necessary to protect the person himself or herself from serious harm), and
 - (b) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person is satisfied that the person is likely to benefit from treatment for his or her substance dependence but is unable or unwilling to participate in treatment voluntarily (whereas, at present, the certificate may be issued only if the person has refused treatment), and
 - (c) a dependency certificate must not be issued unless the accredited medical practitioner who assesses a person has sought the involvement of the person in the process of planning and developing a personalised plan for the person's rehabilitation and treatment. Schedule 1 [35] and [41] make consequential amendments.
13. Schedule 1 [15] inserts two new sections that provide:
 - (a) that an accredited medical practitioner must not issue a dependency certificate in relation to a person unless the medical practitioner has given the person a reasonable opportunity to seek legal representation before the certificate is issued (proposed section 11A) (Schedule 1 [19] makes a consequential amendment), and
 - (b) that, if a person proposed to be assessed is under the age of 18 years, the medical practitioner conducting the assessment must obtain the consent of the parent or guardian of the young person before conducting the assessment and before issuing a dependency certificate (proposed section 11B).
14. Schedule 1 [17] provides (in proposed section 14B) that the Director-General may determine the treatment centre in which a specified dependent person, or a person of a class of dependent persons, is to be treated and that, in making that determination, the Director-General is to have regard to the best interests of the dependent person or persons concerned. The Director-General may also direct that a specified dependent person receive treatment in hospital.
15. Schedule 1 [21] provides (in proposed section 15C) that the director of a treatment centre must make arrangements for any dependent person at the treatment centre to be provided with psychiatric treatment as an integrated part of a rehabilitation plan, and for other medical problems that the person has, and makes provision for that treatment.
16. Schedule 1 [26] provides (in proposed section 19A) that the Director-General may determine that a dependent person is not to be detained or treated under the Act if the

Director-General is aware that the person is awaiting trial for an alleged criminal offence. The amendment also provides (in proposed section 19B) for the detention of persons for the purposes of treatment.

Implanting of naltrexone as alternative to detention

17. Schedule 1 [13] allows (in proposed section 9A (2) (b), (5) and (6)) for an accredited medical practitioner who determines that a person has a severe substance dependence to recommend (during a trial period) that, instead of being detained for treatment, the dependent person should receive out-patient treatment. That out-patient treatment is to consist of naltrexone being implanted under the person's skin and counselling for relapse prevention and for other medical problems. The dependency certificate issued to such a person is defined as a Category B dependency certificate. (A dependency certificate that recommends the detention and treatment of the relevant person is a Category A dependency certificate.)
18. Schedule 1 [21] specifies the elements of the treatment of persons subject to a Category B dependency certificate (proposed section 15A) and provides for such persons to undergo in-patient treatment if they fail to meet their obligations or in other circumstances (proposed section 15B).
19. Schedule 1 [37] provides (in proposed section 24B) for the release of a person from the obligation to have naltrexone treatment if an accredited medical practitioner is satisfied that the person no longer meets the criteria to be certified a dependent person or that the person's continued presence at the treatment centre will not achieve the purpose for which the person was certified a dependent person.
20. Schedule 1 [3], [5], [6], [8], [10], [18], [19], [23]–[25], [27], [41] and [46] make amendments consequent on the creation of new categories of dependency certificate and treatment.
21. Schedule 1 [5], [7], [9], [11] and [31]–[34] make amendments consequent on the creation of two categories of treatment centres (out-patient treatment centres and in-patient treatment centres).

Amendments relating to length of detention

22. Schedule 1 [16] provides (in proposed section 14) that a person must not be detained for treatment for more than 90 days after a dependency certificate is issued (at present the person may not be detained for more than 28 days). The amendment also provides (in proposed section 14A) for the review of the issue of a Category A dependency certificate by a Magistrate.
23. Schedule 1 [22] provides that a dependent person must be told that he or she cannot be involuntarily detained for more than 90 days, and that when the term of the dependency certificate finishes the person may refuse further treatment, and must also be told of his or her rights to legal representation and to competent and reasonable care.
24. Schedule 1 [42] and [43] remove the power of a Magistrate to extend a dependency certificate beyond the new maximum of 90 days. Schedule 1 [39] and [44] make consequential amendments.

Treatment of persons who are detained for treatment

25. Schedule 1 [14] removes a provision about the detention of persons which is transferred to proposed section 14C by Schedule 1 [17].
26. Schedule 1 [17] provides that:
 - (a) a dependent person must not be detained if more than 14 days have elapsed since the issue of the dependency certificate (proposed section 14C (1) (b)), and
 - (b) the treatment of a dependent person must commence no later than 7 days after the person arrives at the relevant treatment centre (proposed section 14C (2)).
27. Schedule 1 [20] provides that:
 - (a) an accredited medical practitioner responsible for the care of a dependent person must give the dependent person an opportunity to be involved in the process of planning and developing a personalised plan for his or her rehabilitation and treatment (proposed section 15 (3)), and
 - (b) a dependent person is entitled to competent and reasonable care while being treated in a treatment centre (proposed section 15 (4)).
28. Schedule 1 [28] provides that when a dependent person is searched by the transport officer who transports the dependent person to a treatment centre, the rights and bodily integrity of the dependent person must be observed at all times.
29. Schedule 1 [30] provides that the director of an in-patient treatment centre must ensure that each dependent person detained at the centre has access to legal representation at all reasonable times. Schedule 1 [19] makes a consequential amendment.
30. Schedule 1 [36] makes additional provision for the discharge of persons who are detained.
31. Schedule 1 [37] provides for the discharge of detained persons so that they can undergo out-patient treatment (proposed section 24A).

ISSUES CONSIDERED BY COMMITTEE

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

Arbitrary detention, consent to medical procedure, physical integrity

32. The Bill permits the involuntary detention and medical treatment of persons who are considered to be suffering from severe substance dependence.
33. The involuntary detention and medical treatment of individuals will always be of concern to the Committee as it raises a number of potential personal rights and liberties issues, including: arbitrary detention; the right to physical integrity; and the right to be free from medical experimentation. However, the Committee notes that the intention of the detention and treatment is to improve the health of the individual and to protect these persons from further harm.

34. The Committee also notes the requirement of judicial approval of such detention and treatment. The inclusion of an independent oversight, is in keeping with the United Nations Office on Drugs and Crime and the World Health Organisation guidelines, *Principles of Drug Dependence Treatment*, that:

only in exceptional crisis situations of high risk to self or others, compulsory treatment should be mandated for specific conditions and periods of time as specified by the law.

The Committee will always be concerned by involuntary detention and medical treatment of individuals. However the Committee notes the purpose of the Act and the inclusion of independent oversight by way of judicial approval and therefore makes no further comment.

5. Election Funding, Expenditure and Disclosures Further Amendment Bill 2012; Parliamentary Electorates and Elections Amendment (Redistributions) Bill 2012

Date introduced	23 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The *Parliamentary Electorates and Elections Amendment (Redistributions) Bill 2012*, proposes to increase the projected margin of allowance for voter enrolment at State elections from 3% to 10%.
2. Meanwhile, the object of the *Election Funding, Expenditure and Disclosures Further Amendment Bill 2012* is to clarify that a party that fails to comply with the obligations under the Act to appoint a party agent commits an offence against that section.
3. This Bill also ensures that a person who is required by section 91(5) of the Act to make a declaration relating to political donations or electoral expenditure is still required to make a declaration even if there are no disclosures to make, and the Bill reaffirms the offence provisions of the principal Act.
4. These two Bill are cognate with each other.

BACKGROUND

5. Section 28 of the *Constitution Act 1902* provides that, in any distribution of New South Wales into electoral districts for the purpose of elections for the Legislative Assembly, the boundaries are to be determined so that there are an equal number of voters in each electorate at the time the distribution is made, but within a margin of allowance not exceeding 10%.
6. Section 17A of the *Parliamentary Electorates and Elections Act 1912* sets out additional criteria for carrying out a redistribution and includes the requirement that the Electoral Districts Commissioners have to give regard to demographic trends and, as far as practicable, ensure that at the time of the next scheduled State general election the number of voters in each electorate will be equal, but with a margin of allowance not exceeding 3%.

7. Section 17A of the *Parliamentary Electorates and Elections Act 1912* must be subject to compliance with requirements of section 28 of the *Constitution Act 1902* in relation to an equal number of voters in electorates at the time the distribution is made, within the 10% margin of allowance.
8. In their report on the 2004 redistribution, the Electoral District Commissioners expressed the view that the 3% projected margin of allowance was too restrictive to take into account strong growth electorates, as well as the other requirements under the Act, which include drawing electoral boundaries that take into account communities of interest, means of communication and travel within the electorate, physical features of the electorate, and existing boundaries.
9. At the March 2011 election, the number of electors in 29 electorates was outside of the 3% quota, with 13 greater than the quota, and 16 that were lower.
10. The *Parliamentary Electorates and Elections Amendment (Redistributions) Bill 2012* gives effect to the Commissioner's recommendation that the projected margin of allowance be increased to 10%.
11. Meanwhile, with respect to the *Election Funding Expenditure and Disclosures Further Amendment Bill 2012*, the Premier advised during his Second Reading Speech that:

The obligation to lodge a declaration is intended to apply also where the declaration contains no specific disclosures of donations or expenditure, in other words, a nil return...

The authorities raised concerns that the offence of failing to lodge a declaration may not be enforceable in relation to nil declarations, that is, declaration that do not contain any specific disclosure of donations or incurred electoral expenditure, will be prosecuted by the authority if they fail to comply with their basic disclosure obligations under the Act.

OUTLINE OF PROVISIONS

Parliamentary Electorates and Elections Amendment (Redistributions) Bill 2012

12. Clause 1 sets out the name (also called the short title) of the proposed Act.
13. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
14. Clause 3 amends section 17A of the *Parliamentary Electorates and Elections Act 1912* to give effect to the proposal set out in the above Overview.

Election Funding, Expenditure and Disclosures Further Amendment Bill 2012

15. Clause 1 sets out the name (also called the short title) of the proposed Act.
16. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
17. Schedule 1 [1] gives effect to paragraph (a) of the Overview.

ELECTION FUNDING, EXPENDITURE AND DISCLOSURES FURTHER AMENDMENT BILL 2012;
PARLIAMENTARY ELECTORATES AND ELECTIONS AMENDMENT (REDISTRIBUTIONS) BILL 2012

18. Schedule 1 [2] gives effect to paragraph (b) of the Overview.
19. Schedule 1 [3] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
20. Schedule 1 [4] extends the amendment made by Schedule 1 [2] to declarations for the period ending 30 June 2012, but gives the persons concerned a further 28 days after the commencement of that amendment in which to lodge a declaration that contains no disclosures.

ISSUES CONSIDERED BY COMMITTEE

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

6. Environmental Planning and Assessment Amendment Bill 2012

Date introduced	24 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Minister for Planning and Infrastructure, Minister Assisting the Premier on Infrastructure

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the principal Act) and other Acts to remove impediments to the supply of housing and to make other miscellaneous changes. In order to remove impediments to the supply of housing, the Bill:
 - (a) clarifies the purpose, status and content of development control plans and how they are to be taken into account during the development assessment process, and
 - (b) enables the regulations to exclude certain residential development in bush fire prone land from the special consultation and development requirements of the NSW Rural Fire Service, and
 - (c) authorises the Commissioner of the NSW Rural Fire Service to review and revise the designation of land on a bush fire prone land map for an area at any time after the map is certified, and
 - (d) specifies development plan costs that may be recovered from owners affected by subdivision orders relating to “paper subdivisions” and makes other amendments relating to the amendment and repeal of such orders and related development plans, and
 - (e) clarifies the provisions relating to biocertification of planning instruments in Sydney’s growth centres to ensure they apply to all environmental planning instruments applying to the land concerned and to all development assessment processes.
2. The Bill also:
 - (a) extends indemnification against possible copyright breaches of documents submitted by persons who do not have copyright where the documents are publicly notified or made use of under the Act, and
 - (b) makes further provision in relation to the issue of compliance certificates and compliance cost notices, and

- (c) provides for the transfer of relevant records when there is a change of principal certifying authority for development, and
- (d) provides for the ongoing assessment of accredited certifiers, requires written contracts for certification work, specifies certain matters to be taken into consideration in disciplinary proceedings against accredited certifiers and changes the conflict of interest provisions for the issuing of compliance certificates by accredited certifiers, and
- (e) changes the name of the State Property Authority to Government Property NSW and transfers the land register of government property from the annual reports legislation to the legislation relating to Government Property NSW (and requires Government Property NSW to keep that register), and
- (f) makes other minor and consequential changes.

BACKGROUND

- 3. In his second reading speech, the Minister indicated that there was a lack of clarity in relation to the role of development control plans in relation to local environmental plans and State environmental planning policies:

The Bill makes it clear that development control plans are guidelines, and have less status than local environmental plans and State environmental planning policies in the assessment process. The bill also makes it clear that development control plans implement planning instruments, rather than the other way around.

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.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Amendments relating to development control plans

- 6. Schedule 1 [1], [2] and [3] set out the purpose and status of development control plans which is primarily to provide guidance (and not statutory requirements) with respect to achieving the aims of environmental planning instruments and the objectives of land zones and to facilitating permissible development under those instruments. The amendments also clarify the provisions of development control plans that do not have effect.
- 7. Schedule 1 [27] contains a savings and transitional provision.
- 8. Schedule 1 [5] clarifies how development control plans are to be taken into account during the development assessment process. In particular, to ensure that they are given less weight and significance than environmental planning instruments and that they are applied flexibly so as to allow alternative solutions to how permissible development may be carried out.

Amendments relating to bush fire prone land

9. Schedule 1 [4] enables the regulations to exclude certain residential development on bush fire prone land from the special consultation and development requirements of the NSW Rural Fire Service.
10. Schedule 1 [14] authorises the Commissioner of the NSW Rural Fire Service to review and revise the designation of land on a bush fire prone land map for an area at any time after the map is certified.

Amendments relating to development contributions for complying development

11. Schedule 1 [6] enables the regulations to require the payment of development contributions under complying development certificates, in particular in circumstances where the relevant development contribution plan has failed to make provision that covers relevant development approved as complying development.

Amendments relating to copyright

12. Schedule 1 [15] makes provision that continues and extends indemnification against possible copyright breaches of documents submitted by persons who do not have copyright where the documents are publicly notified or made use of under the principal Act.
13. Schedule 1 [7] and [12] omit provisions that are no longer necessary as a result of the consolidated provision enacted by Schedule 1 [15].

Amendments relating to certification

14. Schedule 1 [8] makes a minor amendment in relation to the matters for which a compliance certificate may be issued under Part 4A of the principal Act.
15. Schedule 1 [9] enables persons prescribed by the regulations to issue compliance certificates in addition to the current certifying authorities. Schedule 1 [11] makes a consequential amendment.
16. Schedule 1 [10] enables the Building Professionals Board to give a direction to a person who holds records and other information required to be kept under the Building Professionals Act 2005 in relation to a certification matter to give those records and information to a principal certifying authority that has been appointed to replace another principal certifying authority for that matter.
17. Schedule 1 [13] enables a compliance cost notice given in relation to an order under Division 2A of Part 6 of the principal Act requiring a person to do or refrain from doing a specified thing to also include the costs of an investigation that led to the giving of the order and the costs of preparing the notice of intention to give the order. There is already a provision in the principal Act that enables the regulations to limit the amounts to be paid under compliance cost notices. (See section 121CA (5) of the principal Act.)

Amendments relating to paper subdivisions

18. Schedule 1 [16] inserts a definition of 'development plan costs' for the purposes of a subdivision under a subdivision order relating to the consolidation and resubdivision of an old "paper subdivision". These costs will include report costs, levies, fees or other

charges applicable to a proposed subdivision or subdivision works, administrative costs and costs prescribed by the regulations.

19. Schedule 1 [17] enables the category of works that may be carried out and funded under such a subdivision order to be expanded by the regulations.
20. Schedule 1 [18] provides that a subdivision order may be repealed by the Minister only if the Minister has consulted with the relevant authority carrying out the subdivision under the order and the local council and is satisfied that notice has been given to the owners of the land concerned. The amendment also makes it clear that a further consent of the owners of the land concerned is not required in respect of an amendment to a subdivision order.
21. Schedule 1 [19] requires the development plan that applies to land subject to a subdivision order to contain details of the development plan costs.
22. Schedule 1 [20] provides for a development plan to include details of the proportion of development plan costs to be borne by the owners of the land.
23. Schedule 1 [21] enables regulations to be made to require the consent of the owners of land subject to a subdivision order to changes to the development plan for the land.
24. Schedule 1 [22] enables the relevant authority that is proposing a subdivision under a subdivision order to require an owner of land subject to the order to make a reasonable monetary contribution to the development plan costs for the order.
25. Schedule 1 [23] provides for contributions for development plan costs to be paid to a fund approved by the Minister.
26. Schedule 1 [24] includes development plan costs as contributions that may be covered by a voluntary contributions agreement between a relevant authority responsible for a subdivision under a subdivision order and an owner of land subject to the subdivision order.
27. Schedule 1 [25] enables regulations to be made about the effect of the repeal or amendment of a subdivision order or the amendment of a development plan for a amendment of a subdivision order.

Savings and transitional provisions

28. Schedule 1 [26] enables the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.
29. Schedule 1 [27] makes savings and transitional provisions as a consequence of the enactment of the proposed Act.

Schedule 2 Amendments of other Acts

Annual Reports (Departments) Act 1985 No 156 and Annual Reports (Statutory Bodies) Act 1984 No 87

30. Schedule 2.1 and 2.2 amend the annual reports legislation to omit land register provisions that are being consolidated and transferred to the *State Property Authority Act 2006* (to be renamed the *Government Property NSW Act 2006*) without

substantive change, other than to require the registers to be kept by Government Property NSW.

Building Professionals Act 2005 No 115

Ongoing assessment of accredited certifiers

31. Schedule 2.3 [3] enables the Building Professionals Board (the Board) to require an accredited certifier to undertake a type of assessment (such as an examination) for any reason.
32. Schedule 2.3 [1] and [2] provide that the Board may suspend or cancel an accredited certifier's accreditation following such an assessment without the need to take disciplinary proceedings under the Act. Notice and an opportunity to make submissions must be given by the Board and there is a right of review to the Administrative Decisions Tribunal (the Tribunal). Other action is also available to the Board under the existing provisions of the Act, such as the imposition of conditions on accreditation.

Amendments relating to certification work

33. Schedule 2.3 [8] exempts an accredited certifier from certain conflict of interest provisions in the Act when issuing a compliance certificate under the *Environmental Planning and Assessment Act 1979*.
34. Schedule 2.3 [10] prevents an accredited certifier carrying out certification work for a person unless the accredited certifier or the accredited certifier's employer has entered into a written contract with the person and the contract complies with the requirements of the regulations. Schedule 2.3 [9] makes a consequential amendment.

Disciplinary proceedings

35. Schedule 2.3 [5] and [6] require the Board and the Tribunal, when deciding what disciplinary action should be taken against an accreditation holder in disciplinary proceedings, to take into consideration previous disciplinary action taken against the accreditation holder. Schedule 2.3 [4] and [7] make consequential amendments.
36. Schedule 2.3 [11] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Building Professionals Amendment Act 2008 No 37

37. Schedule 2.4 amends the *Building Professionals Amendment Act 2008* to omit uncommenced provisions that are not being proceeded with.

Environmental Planning and Assessment Amendment Act 2008 No 36

38. Schedule 2.5 amends the *Environmental Planning and Assessment Amendment Act 2008* to omit uncommenced provisions that are not being proceeded with.

Growth Centres (Development Corporations) Act 1974 No 49

39. Schedule 2.6 amends the *Growth Centres (Development Corporations) Act 1974* to enable Landcom (and other prescribed public authorities) to work together with Urban Growth NSW and other development corporations on land development without contravening misuse of confidential information provisions.

Heritage Act 1977 No 136

40. Schedule 2.7 amends the *Heritage Act 1977* to make an amendment that is consequential on the transfer of the land register provisions from the annual reports legislation.

State Property Authority Act 2006 No 40

41. Schedule 2.8 amends the *State Property Authority Act 2006* to change the name of the State Property Authority to Government Property NSW and to make provision for the register of government property, which is being transferred from the annual reports legislation (and to require Government Property NSW to keep that register).

Threatened Species Conservation Act 1995 No 101

42. Schedule 2.9 amends the *Threatened Species Conservation Act 1995* to clarify the provisions relating to biocertification of planning instruments in Sydney's growth centres to ensure they apply to all environmental planning instruments applying to the land concerned and to all development assessment processes.

ISSUES CONSIDERED BY COMMITTEE

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

Intellectual property

43. Schedule 1[15] of the Bill amends the principal act through the inclusion of section 158A, which provides that a relevant person who is not entitled to copyright in a document that is part of a planning matter is taken to have indemnified all persons using the document for the purposes of the Act against any claim or action in respect of a breach of copyright in the document.

The Committee notes that the practical effect of the inclusion of section 158A may be that an architect's plans are published and made public despite any copyright the architect may wish to assert. However, given the public policy objectives of the Bill, the Committee makes no further comment in relation to this issue.

Confidentiality

44. Section 33 of the *Growth Centres (Development Corporations) Act 1974* outlines that a person gains an advantage if that person deals in that land for the purpose of gaining an advantage for themselves in circumstances where they have knowledge of specific information relating to proposals made, or to be made, by a corporations in respect of the use and development of land and that information is not generally known.
45. Schedule 2.6 of the Bill outlines an amendment to section 33, stating that a reference to gaining an advantage does not include a reference to Landcom gaining an advantage.

The Committee notes that the purpose of section 33 is to prevent the misuse of information during the development of growth centres in New South Wales. The Committee is concerned that the amendment to section 33 – outlining that a breach of misuse of information clauses are not governed by section 33 if they relate to Landcom - may have the effect that confidential information may be compromised. However, the Committee notes that Landcom is a public

authority and notes that it is not unreasonable for the Government to make arrangements that may be to the advantage of public authorities. As such, the Committee makes no further comment in relation to this issue.

Presumption of innocence

46. With reference to disciplinary action, schedules 2[5] and 2[6] of the Bill outline that the Tribunal is to take into consideration any previous disciplinary action taken.

The Committee notes that the practical effect of requiring a Tribunal to take into consideration any previous disciplinary action taken may impact on the presumption of innocence of the accreditation holder. However, given the public policy objectives of the Bill, the Committee considers this to be reasonable in the circumstances and makes no further comment on this issue.

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

Ill and wide defined power

47. Schedule 1[6] provides that the regulations may make provision that an amount of monetary contribution or levy be determined in a manner and by a person or body authorised by the regulations with respect to the consideration of contributions plans.

The Committee considers that providing a power in the regulations to an undefined person or body to determine the amount of monetary contributions or levies without providing any guidance in the principal legislation as to the reasonableness of such contributions or levies amounts to an ill and wide defined power. However, given the public policy considerations that inform the Bill, the Committee makes no further comment in relation to this issue.

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

Commencement by proclamation

48. The Bill provides for the Act to commence on a day or days to be appointed by proclamation, with the exception of sections 1 and 2 and subschedules 2.6 and 2.9 which commence on assent and subschedules 2.1, 2.2, 2.7 and 2.8 which commence on 12 December 2012.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative requirements involved in commencing various aspects of this Bill, and makes no further comment on this issue.

7. Forestry Bill 2012

Date introduced	24 October 2012
House introduced	Legislative Council
Member with carriage	The Hon. Duncan Gay MLC
Minister responsible	The Hon Katrina Hodgkinson MP
Portfolio	Minister for Primary Industries

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:
 - (a) to constitute the Forestry Corporation of New South Wales (the Corporation) as a statutory State owned corporation and to confer on it functions relating to the management of the State's timber resources,
 - (b) to authorise the Corporation to carry out forestry operations in State forests and on other Crown-timber land,
 - (c) to continue without any change the current system of integrated approvals for forestry operations,
 - (d) to provide for the use and management of State forests for non-forestry purposes,
 - (e) to dissolve the Forestry Commission and to provide for the transfer of its assets, rights and liabilities to the Corporation,
 - (f) to repeal the *Forestry Act 1916* and the *Timber Marketing Act 1977*,
 - (g) to make consequential and minor amendments to other legislation.

BACKGROUND

2. The Second Reading Speech to the Bill indicates that the introduction of this Bill follows a Better Services and Taskforce Review which found that the financial performance of Forests NSW could be improved. The review recommended that corporatisation would provide the most effective governance structure. In particular, the speech stated:

As a public trading enterprise, Forests NSW is restricted from reaching its full financial and operational potential because of governance arrangements. For example, Forests NSW must operate within a budget-dependent agency, namely, the Department of Primary Industries. Corporatisation offers a solution. It will afford the Forestry Corporation greater commercial focus and flexibility so that it can concentrate on its core business and deliver a better return on our State-owned assets.

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 defines words and expressions used in the proposed Act. Forestry operations is defined to mean logging operations, the harvesting of forest products, on-going forestry management operations or ancillary road construction.
6. Clause 4 defines the term plantation as an area of Crown-timber land, or an area of land owned by the Corporation, on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted for the purpose of timber production, for the protection of the environment or for any other purpose (but not for the production of food or produce other than timber).

Part 2 Forestry Corporation

Division 1 Constitution and management of Forestry Corporation

7. Clause 5 constitutes a corporation with the corporate name of the Forestry Corporation of New South Wales. Schedule 4 to the proposed Act amends the *State Owned Corporations Act 1989* (the SOC Act) to make the Corporation a statutory State owned corporation.
8. Clause 6 provides that the Corporation is to have a board of directors.
9. Clause 7 provides for the chief executive officer of the Corporation to be appointed by the board but only with the approval of the voting shareholders of the Corporation.
10. Clause 8 provides for the appointment of an acting chief executive officer during the illness or absence of the chief executive officer.
11. Clause 9 makes it clear that the provisions of the proposed Act are in addition to and do not derogate from the provisions of the SOC Act.

Division 2 Objectives and functions of Forestry Corporation

12. Clause 10 set out the objectives of the Corporation which include being an efficient and environmentally sustainable supplier of timber from Crown-timber land and land owned by it or otherwise under its control or management.
13. Clause 11 sets out the functions of the Corporation, which include to carry out or authorise the carrying out of forestry operations in accordance with good forestry practice on Crown-timber land or land owned by the Corporation.
14. Clause 12 provides that the Corporation is the owner of the trees in any plantation that is or is part of a State forest.

Part 3 State forests and flora reserves

Division 1 Dedication of Crown land

15. Clause 13 provides for the Minister to classify Crown land for the purpose of selecting land that is suitable and desirable in the public interest to be dedicated as State forest. The proposed section specifies the matters that the Minister is to take into account in classifying Crown land for that purpose.
16. Clause 14 provides that the Governor may dedicate as State forest any Crown land that is not the subject of a tenure from the Crown. The consequence of land being dedicated as State forest is that it cannot be dealt with otherwise than as provided by the proposed Act.
17. Clause 15 provides that the dedication of land as State forest cannot be altered or revoked unless Parliament has approved the alteration or revocation.
18. Clause 16 provides for the Governor to dedicate certain Crown land, or land that is a State forest, as a flora reserve for the preservation of native flora. Any such dedication cannot be revoked except by an Act of Parliament.
19. Clause 17 requires the Minister to continuously review the dedication of land as State forests to determine if the land should continue to be so dedicated.

Division 2 Special management zones

20. Clause 18 provides for the Minister to declare an area of State forest of special conservation value to be a special management zone. The object of the declaration is to protect the special conservation value of the land. Any such declaration cannot be revoked except by an Act of Parliament.
21. Clause 19 sets out the consequences of land being declared to be a special management zone which include that general purpose logging is prohibited. The Minister may also prohibit particular kinds of forestry operations in special management zones or may impose conditions on any forestry operations in such zones.
22. Clause 20 provides that the Governor may revoke the declaration of land as a special management zone.

Division 3 Management plans and working plans

23. Clause 21 requires the Corporation to prepare and adopt plans for its management of State forests.
24. Clause 22 prevents the Corporation from adopting a management plan for a State forest that is wholly or partly located in the area to which an integrated forestry operations approval applies unless the management plan is in accordance with the terms of that approval. Any inconsistent provisions of a management plan are overridden by the approval.
25. Clause 23 requires a draft management plan to be published, and for information to be provided about it, before the final management plan is adopted.

26. Clause 24 requires the Corporation to review any management plan for a State forest after any review and amendment of any integrated forestry operations approval that applies to the same land to ensure they remain consistent. The Corporation may also review a management plan at any other time it considers appropriate.
27. Clause 25 requires the Corporation to prepare a detailed written scheme of the operations to be carried out on or in relation to each flora reserve. A separate working scheme must be prepared for each reserve, with the object of preserving the native flora of the flora reserve.

Division 4 Acquisition and sale of land

28. Clause 26 empowers the Minister to acquire land (whether by agreement or compulsory process) for the purposes of a State forest, for providing access to a State forest or for any purpose necessary for or incidental to the management or control of a State forest. If the land is compulsorily acquired, the *Land Acquisition (Just Terms Compensation) Act 1991* applies to the acquisition.
29. Clause 27 provides for the Minister to compulsorily acquire land dedicated as State forest for the purpose of giving effect to a land exchange agreement. Such an acquisition would revoke any dedication of the land as State forest.
30. Clause 28 provides for the Minister to acquire land (whether by agreement or compulsory process) for the purpose of a future lease grant or dealing.
31. Clause 29 authorises the Minister to sell acquired land in certain circumstances.
32. Clause 30 provides that any acquisition of land under the proposed Division is taken to be for an authorised work for the purposes of the *Public Works Act 1912*. The Minister is taken to be the Constructing Authority under that Act.

Division 5 Miscellaneous

33. Clause 31 authorises the Minister to enter into an agreement for the sale or other disposal of land dedicated as State forest, subject to the sale of other land (or an interest in other land) to the Crown for the purpose of a State forest or for access to a State forest.
34. Clause 32 provides for revocation of the dedication of a small area of land as State forest if the Minister is of the opinion that the land should be made available for a public work or authorised work or for a public purpose.
35. Clause 33 prohibits the granting of a lease to occupy land within a State forest or flora reserve except in accordance with the proposed Act.
36. Clause 34 provides for the Minister to grant, and accept the surrender of, easements and rights of way through or over land within a State forest or flora reserve.
37. Clause 35 specifies the ways in which land within a State forest or flora reserve is subject to certain mining legislation. Such land is to be treated as an exempted area under such Acts and the exercise of any right under the Acts on land within a State forest or flora reserve is to be subject to such conditions and restrictions relating to forestry or the

purposes of the flora reserve as may be prescribed by the regulations. The Minister may exempt any part of a State forest or flora reserve from the mining legislation.

38. Clause 36 provides that leases or licences from the Crown are not affected by the dedication of land as State forest, the declaration of land as a special management zone or the dedication or setting apart of land as a flora reserve, unless the proposed Act specifies how such leases or licences are affected. In particular, the proposed section provides that an existing lease or licence may not be renewed or extended.
39. Clause 37 provides that the Minister may declare roads constructed on land dedicated as a State forest or flora reserve to be a road of access to land purchased or held under a lease or licence under certain Acts relating to Crown lands.

Part 4 Taking of timber, forest products and forest materials

Division 1 General offence

40. Clause 38 creates an offence of unlawfully taking timber. The offence prohibits a person from cutting, stripping, obtaining, removing, destroying or damaging any timber, or digging for, extracting, obtaining, removing, destroying or damaging any forest products (or causing or allowing any of those actions) on any Crown-timber land. It also prohibits quarrying, digging for, extracting, obtaining, removing, destroying or damaging any forest materials (or causing or allowing any of those actions) on any State forest or flora reserve. The proposed section sets out exemptions, including when such activities are carried out under the authority of a licence or small quantity authorisation under the proposed Act or are authorised by legislation dealing with native vegetation, mining or other matters. Also, the proposed section does not apply to forestry operations carried out by or on behalf of the Corporation or forest products or forest materials taken by the Corporation.

Division 2 Licensing scheme

41. Clause 39 specifies the types of licences that may be issued by the Corporation (namely, timber licences, forest products licences, forest materials licences and clearing licences). The proposed section also provides that the authority conferred by a licence is subject to the regulations.
42. Clause 40 provides that a timber licence authorises the holder to take timber, or such class or description of timber as is specified in the licence, on Crown-timber land and specifies the duration of such a licence.
43. Clause 41 provides that a forest products licence authorises the holder to take forest products, or such class or description of forest products as is specified in the licence, on Crown-timber land and specifies the duration of such a licence.
44. Clause 42 provides that a forest materials licence authorises the holder to take forest materials, or such class or description of forest materials as is specified in the licence, from a State forest and specifies the duration of such a licence.
45. Clause 43 provides that a clearing licence authorises the holder (and successors in title to the relevant land) to ringbark or otherwise kill or destroy trees, or such class or description of trees as is specified in the licence, on such Crown-timber land as is specified in the licence.

- 46. Clause 44 sets out restrictions on the issue of licences of various classes.
- 47. Clause 45 provides that the Corporation may authorise a person to take small quantities of timber, forest products or forest materials from land within a State forest (other than land set apart as a flora reserve) or to take small quantities of timber or forest products from Crown land.
- 48. Clause 46 authorises the Corporation to suspend or revoke a licence or small quantity authorisation in certain circumstances.
- 49. Clause 47 provides for the Corporation to delegate any of its functions under the proposed Division that relate to clearing licences (except in respect of State forests and timber reserves) or small quantity authorisations.

Division 3 Payment of resource acquisition fee

- 50. Clause 48 defines words and phrases used in the proposed Division.
- 51. Clause 49 requires the holder of a timber licence, forest products licence or forest materials licence to pay a resource acquisition fee in respect of the timber, forest products or forest materials taken under the authority of the licence. Any such resource acquisition fee is payable to and recoverable by the Corporation. A resource acquisition fee is not payable in respect of timber taken under the authority of a timber licence from land the subject of a Crown tenure if the timber is derived from trees which, in the opinion of the Corporation, have been planted or established and have been maintained by careful tending and improvement as a woodlot or forest or for the purpose of tree-farming or have been planted or established as a windbreak or for the beautification of the land.
- 52. Clause 50 specifies the circumstances in which the Corporation is not entitled to a resource acquisition fee, namely in respect of timber or forest products derived from trees that have been established on land that is the subject of a forestry right and taken in accordance with the forestry right and any restriction on use or covenant imposed in connection with the forestry right, unless the forestry right is granted by the Corporation.
- 53. Clause 51 provides that the Corporation may determine the amount of a resource acquisition fee, either generally or in a particular case or class of cases, subject to any maximum amount prescribed by a regulation made with the concurrence of the Treasurer.
- 54. Clause 52 provides that the Corporation may pay part of a resource acquisition fee to an organisation established for the promotion or improvement of the use or marketing of timber or forest products produced in New South Wales.
- 55. Clause 53 requires, in relation to land held by a lessee under certain leases, purchase-tenure land or a controlled travelling stock reserve, that the Corporation pay to the landholder concerned one-third of the balance of the resource acquisition fee remaining after deduction of the costs of the Corporation and certain other amounts.
- 56. Clause 54 requires the Corporation to make certain resource acquisition fee payments in certain circumstances.

57. Clause 55 provides for the recovery of an amount equivalent to a resource acquisition fee in relation to timber, forest products or forest materials taken without lawful authority.
58. Clause 56 provides for the Corporation to enter into an agreement with the holder of a timber licence, forest products licence or forest materials licence for the construction by the licence holder of any works that, in the opinion of the Corporation, are necessary to enable timber, forest products or forest materials to be taken from the land in respect of which the licence is issued and for the cost of the works to be deducted from any resource acquisition fee that the holder would otherwise be liable to pay.

Part 5 Use of forestry areas for non-forestry purposes

Division 1 Land managers

59. Clause 57 provides that the Corporation is the land manager of forestry areas (eg State forests and flora reserves) except if the Minister, with the concurrence of the voting shareholders of the Corporation, appoints a different land manager for specified forestry areas (either generally or only for the purpose of exercising specified land management functions in relation to that area). The proposed section provides that the land manager of a forestry area has the functions conferred or imposed by the proposed Act or any other Act in relation to the forestry area unless the functions are limited by the Ministerial order appointing the land manager.
60. Clause 58 provides that the functions of a land manager of a forestry area are confined to non-forestry uses, that is, the functions that the land manager may exercise do not include functions relating to the carrying out of forestry operations or functions of the kind conferred or imposed on the Corporation under proposed Part 2.
61. Clause 59 sets out the objectives of the land manager of a forestry area in the exercise of functions as land manager, namely to facilitate public access to the forestry area, to promote the recreational use of the forestry area and to conserve fauna (other than feral animals) living in the forestry area. The proposed section also specifies the manner in which the functions of the land manager of a forestry area are to be exercised.

Division 2 Forest permits and leases

62. Clause 60 provides for the land manager of a forestry area to issue forest permits. Such permits authorise the holder to use the forestry area for the purposes (including recreational, sporting or commercial activities) specified in the permit.
63. Clause 61 specifies the circumstances in which a forest permit may not be issued and makes other provision in relation to forest permits.
64. Clause 62 provides that the land manager of a forestry area that is, or is part of, a State forest may lease land within the area for any purpose specified in the lease.
65. Clause 63 provides for the suspension and revocation of forest permits and leases.

Division 3 Provision of services and facilities for non-forestry purposes

66. Clause 64 provides that the land manager of a forestry area may enter into an agreement with the Minister under which the land manager agrees to provide, or facilitate the provision of, services and facilities for the benefit of persons who use the

area otherwise than to carry out forestry operations, including fire protection measures, the establishment and maintenance of roads and the management of recreational areas.

- 67. Clause 65 empowers the Minister to direct the land manager of a forestry area to provide or facilitate the provision of services and facilities in the area that the Minister is satisfied are for the benefit of persons who use the area otherwise than to carry out forestry operations.
- 68. Clause 66 provides for the resolution of disputes between the Minister and a land manager to whom such a direction has been given.

Division 4 Miscellaneous

- 69. Clause 67 makes it an offence to use any land within a forestry area without lawful authority.
- 70. Clause 68 creates offences relating to hunting and using firearms or other weapons in a forestry area. Exemptions are specified, including where a person is acting under the authority of a forest permit or forest lease or has the consent of the land manager.
- 71. Clause 69 empowers the land manager of a forestry area to remove any unauthorised structure from the forestry area.

Part 6 Investigations and enforcement powers

Division 1 Appointment of authorised officers

- 72. Clause 70 provides for the appointment of authorised officers who will have investigation and enforcement powers under the proposed Act.
- 73. Clause 71 provides that a police officer may exercise the functions of an authorised officer under the proposed Act.
- 74. Clause 72 provides for authorised officers to be issued with identification cards and requires such officers to carry those cards with them when exercising functions under the Act that involve entering premises and to produce the cards when required to do so by the occupier of the relevant premises.

Division 2 Powers of authorised officers

- 75. Clause 73 defines terms used in the proposed Division.
- 76. Clause 74 specifies that the powers of authorised officers may only be exercised for determining whether there has been a contravention of the proposed Act or the regulations, for obtaining information or records for purposes connected with the administration of the proposed Act or in connection with exercising the functions of an authorised officer under the proposed Act.
- 77. Clause 75 empowers authorised officers to enter premises for authorised purposes. The power of entry does not extend to any part of premises used only for residential purposes (unless the authorised officer has the permission of the occupier or has obtained a search warrant).

- 78. Clause 76 provides for the issue of search warrants in cases where the issuing officer has reasonable grounds for believing that a provision of the proposed Act or the regulations has been or is being contravened in or about the relevant premises.
- 79. Clause 77 empowers authorised officers to search premises, to examine, inspect and seize certain things and to require records to be produced for inspection.
- 80. Clause 78 empowers authorised officers to detain and search vehicles or vessels.
- 81. Clause 79 provides for the forfeiture of things seized under the proposed Division, or for their return, in specified circumstances.
- 82. Clause 80 empowers an authorised officer to require a person to furnish information and records in connection with any matter arising under or in connection with the proposed Act.
- 83. Clause 81 empowers an authorised officer to require a person whom the officer reasonably suspects has committed an offence under the proposed Act or the regulations to state his or her name and address. The proposed section also empowers an authorised officer to require the driver of a motor vehicle in a forestry area to produce his or her driver licence and state his or her name and address.
- 84. Clause 82 empowers an authorised officer to require the owner of a motor vehicle or any other person to give information if the officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence under the proposed Act.
- 85. Clause 83 makes any failure to comply with a requirement of the proposed Division, or the giving of false or misleading information in purported compliance with the proposed Part, an offence. The proposed section also makes it an offence to obstruct, delay, hinder, impersonate, assault, threaten or intimidate, or attempt to bribe, an authorised officer.

Part 7 Criminal proceedings and related matters

- 86. Clause 84 provides that proceedings under the proposed Act or the regulations are to be dealt with summarily before the Local Court and specifies the time limit for bringing proceedings.
- 87. Clause 85 provides for the issue of penalty notices for certain offences under the proposed Act or the regulations.
- 88. Clause 86 provides for the making of orders for compensation for any loss or damage to any land or property owned by or under the control or management of the Corporation or costs and expenses incurred by the Corporation in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage, by reason of the commission of an offence for which a person has been convicted.
- 89. Clause 87 imposes liability on vehicle owners for parking offences.
- 90. Clause 88 makes provision for the evidentiary value of certain notices or facts.

Part 8 Miscellaneous

91. Clause 89 provides for the review of certain decisions under the proposed Act by the Administrative Decisions Tribunal.
92. Clause 90 provides for the delegation of the Minister's functions under the proposed Act.
93. Clause 91 requires the Corporation to review its native timber harvesting and haulage costs every 3 years and to report on the results of the review. The report is required to be provided to the Independent Pricing and Regulatory Tribunal which is authorised to review the report and make recommendations.
94. Clause 92 provides for the making of regulations under the proposed Act.
95. Clause 93 provides for the review of the proposed Act after 5 years from the date of assent.

Schedule 1 Special provisions relating to purchase-tenure land

96. Schedule 1 transfers, with minor modifications only, provisions relating to purchase-tenure land from the *Forestry Act 1916*.

Schedule 2 Dissolution of Forestry Commission

97. Schedule 2 dissolves the Forestry Commission and provides for the vesting of assets, rights and liabilities of the Forestry Commission in the Corporation, for the transfer of certain other assets, rights and liabilities and for the transfer of certain staff to the Corporation. The Schedule also provides for the transfer to the Corporation of certain existing offices, workshops and depots used by the Forestry Commission.

Schedule 3 Savings, transitional and other provisions

98. Schedule 3 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and includes provisions relating to the Forestry Commission and other matters that are consequent on the enactment of the proposed Act and the repeal of the *Timber Marketing Act 1977*. In particular, existing forest agreements and integrated forestry operations approvals under the *Forestry and National Park Estate Act 1998* are taken to be forest agreements and integrated forestry operations approvals in force under the proposed Act.

Schedule 4 Amendment of other legislation

99. Schedule 4 amends other legislation as a consequence of the enactment of the proposed Act. The amendments generally replace references to the former Act and the Forestry Commission with references to the proposed Act and the Corporation.
100. Schedule 4.11 [16] transfers Parts 3 and 4 of the *Forestry and National Park Estate Act 1998* (which relate to forest agreements and integrated forestry operations approvals) to the proposed Act as Parts 5A and 5B respectively. That Act is currently administered by the Minister for the Environment and the transfer is not intended to change existing Ministerial administration arrangements in relation to those provisions.

Schedule 5 Repeals

101. Schedule 5 repeals the *Forestry Act 1916* and the *Timber Marketing Act 1977* and the regulations made under those Acts.

ISSUES CONSIDERED BY COMMITTEE

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

Property

102. Clause 12 of the Bill provides that the Forestry Corporation is the owner of the trees in any plantation that is, or is part of, a State forest. This ownership has effect even though State forests are vested in the Crown. Clause 12 also operates to extinguish any existing rights in any such trees before the commencement of the section. The Clause also provides that no compensation is payable in respect of the enactment of the section.
103. The Committee notes that the Second Reading Speech provides that the main purpose of this clause is to extinguish unequivocally the State's interest in these trees.

The Committee notes that the Bill may impact upon property rights. The Committee notes the purpose of the Bill and makes no further comment.

Employment

104. Part 4 of Schedule 2 to the Bill provides for the transfer of existing staff of the Forestry Commission to the Forestry Corporation. The terms and conditions for transferred staff remain the same for 6 months at which point transferred staff members must enter into an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth.
105. The Committee notes that the Bill provides that a transferred staff member retains any right to annual, extended, long service, sick or other forms of leave accrued during their employment.

The Committee notes that State employees may have a preference to work for the agency for which they applied to work, or a general preference to keep the terms and conditions of employment under which they applied to work. Given the objects of this Bill, the Committee makes no further comment on this issue.

Denial of compensation

106. This Bill repeals the *Timber Marketing Act 1977* which was an Act to control the sale and use of certain timbers. The Second Reading Speech provides that after a recent review it was considered retention of the Act was unnecessary.
107. This Bill provides that compensation is not payable because of the repeal of the Timber Marketing Act or for the consequences of that repeal.

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

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

Commencement by proclamation

108. The Bill provides that the Act will commence on a day or days to be appointed by proclamation. The Committee notes that providing the Act to commence on proclamation delegates to the Government the power to commence an Act on whatever day it chooses after assent.

The Committee considers that allowing time for the formation of the new Forestry Corporation of New South Wales is an appropriate reason to delay the commencement of the Bill.

8. Government Information (Public Access) Amendment (Removal of Application Fee) Bill 2012*

Date introduced	25 October 2012
House introduced	Legislative Assembly
Member with carriage	The Hon. John Robertson MP
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Government Information (Public Access) Act 2009*:
 - (a) to remove the current requirement to pay a fee when making an application or other request for government information under that Act, and
 - (b) to provide that, if any processing charge is imposed for dealing with an access application, the first hour of dealing with the application is to be free of charge.

BACKGROUND

2. In his second reading speech, the Hon. John Robertson MP outlined a connection between accountability, transparency, scrutiny of government and freedom of information, noting:

The first step towards this is being able to initiate a freedom of information request without the existence of a cost deterrent.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Government Information (Public Access) Act 2009 No 52

5. Schedule 1 makes the amendments described in the Purpose and Description above, removes all references to an application fee from the *Government Information (Public Access) Act 2009* and makes other consequential amendments.

ISSUES CONSIDERED BY COMMITTEE

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

9. Independent Commission Against Corruption Amendment (Register of Disclosures by Members) Bill 2012

Date introduced	23 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Barry O'Farrell MP
Portfolio	Premier

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988* to remove any doubt that the Independent Commission Against Corruption may use the register of pecuniary interests or other matters disclosed by members of Parliament:
 - (a) for the purpose of any investigation into whether or not a member publicly disclosed a particular matter or as to the nature of any matter disclosed, and
 - (b) for the purpose of any finding, opinion or recommendation concerning the disclosure or non-disclosure.

BACKGROUND

2. The Independent Commission Against Corruption (ICAC) is currently conducting investigations into alleged corrupt conduct by former Ministers and Members of Parliament. During the course of its investigations the ICAC obtained copies of the Register of Disclosures of each House. Questions arose as to whether parliamentary privilege applied to the registers despite the registers being publicly available and open to public scrutiny.
3. After seeking legal advice it was considered that legislation should be enacted to remove any doubt that the ICAC may use the registers in relation to its investigations.

OUTLINE OF PROVISIONS

4. Clause 1 sets out the name (also called the short title) of the proposed Act.
5. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Independent Commission Against Corruption Act 1988 No 35

6. Schedule 1 amends section 122 of the Act (which preserves parliamentary privilege in the proceedings of Parliament) to give effect to the object in the Overview above. The amendment makes it clear that the Commission may make use of a relevant register

despite any parliamentary privilege that may apply to the register. The Commission may do so in respect of current investigations and relevant registers already obtained.

7. A relevant register is defined as a register of pecuniary interests or other matters required to be compiled and maintained pursuant to the regulations made under section 14A of the *Constitution Act 1902*, and includes:
- (a) a copy of any such register (or of a part of any such register) that is published as a parliamentary paper or otherwise, and
 - (b) a return or other document furnished by a member of Parliament for the purpose of the compilation and maintenance of the register, or a copy of the whole or any part of any such return or document.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

8. The Bill provides for the use of a register of pecuniary interest to investigations instigated, and relevant registers obtained for use, before the commencement of the provisions.

The Committee notes the retrospective effect of the provisions within the Bill, however given the purpose of the Bill makes no further comment.

10. Liquor Amendment (Kings Cross Plan of Management) Bill 2012

Date introduced	24 October 2012
House introduced	Legislative Assembly
Member with Carriage	The Hon. George Souris MP
Minister responsible	The Hon. Michael Gallacher MLC
Portfolio	Minister for Police and Emergency Services

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Liquor Act 2007* and other legislation to implement the first stage of the Government's plan of management for the Kings Cross precinct. The measures in that plan to be implemented by this Bill include the following:
 - (a) extending until 24 December 2015 the existing freeze on granting liquor licences and development consents, and various other liquor-related authorisations such as late trading, in relation to premises in the Kings Cross precinct,
 - (b) expanding the boundaries of the Kings Cross precinct so as to cover a wider area than the area to which the freeze provisions currently apply,
 - (c) excluding small venues in the Kings Cross precinct (ie venues that are restricted to no more than 60 patrons and on which gambling activities or take-away liquor sales are not permitted) from the operation of the freeze provisions,
 - (d) authorising the regulations to impose specific licence conditions relating to premises in the Kings Cross precinct,
 - (e) requiring all licensees, bar staff and security personnel in the Kings Cross precinct to obtain a responsible service of alcohol competency card by March 2013 (such cards must be renewed every 5 years and include photo ID).

BACKGROUND

2. This Bill forms part of the Government's response to issues in Kings Cross. The Minister for Police outlined in his second reading speech that the Bill sought to address issues related to crime arising from the consumption of alcohol and drugs and other antisocial behaviour in the Kings Cross precinct:

It comprises a whole of government approach, including measures to improve transport, licensing and compliance, policing and public spaces.

OUTLINE OF PROVISIONS

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

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

Schedule 1 Amendment of Liquor Act 2007 No 90

5. Schedule 1 [1] and [2] define the Kings Cross precinct for the purposes of the *Liquor Act 2007* (the Act). The precinct will consist of the area currently set out in Schedule 2 to the Act (but which only has effect at present in relation to late trading by hotels on Sundays). The precinct as so defined will be wider than the Kings Cross precinct currently described in Schedule 5 to the Act (being one of the precincts in which the current liquor licence and development consent freeze operates).
6. Schedule 1 [4], [5], [7], [11] and [12] are consequential amendments.
7. Schedule 1 [3] provides that the period of the liquor licence and development consent freeze for premises in the Kings Cross precinct will continue until 24 December 2015. The freeze period for other precincts described in Schedule 5 to the Act (namely the CBD South precinct and the Oxford Street, Darlinghurst precinct) is presently due to expire on 24 December 2012.
8. Schedule 1 [6] excludes small venues in the Kings Cross precinct from the operation of the freeze provision.
9. Schedule 1 [8] authorises the regulations to impose specific licence conditions relating to premises in the Kings Cross precinct. The conditions that may be prescribed by the regulations may (without limiting the matters to which they may relate) include matters such as restricting or prohibiting the use of glass containers on licensed premises, the exclusion of specified classes of persons from licensed premises and various measures relating to the responsible service of alcohol and public safety.
10. Schedule 1 [9] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.
11. Schedule 1 [10] contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act. In particular, the operation of the licence and development consent freeze provisions will extend to applications relating to premises in the extended Kings Cross precinct but only if the application was made on or after 19 September 2012. Also, the existing *Kings Cross Precinct Liquor Accord* will be terminated as the measures imposed under that accord are intended to be covered by the specific licence conditions to be imposed by the proposed regulations relating to the Kings Cross precinct.

Schedule 2 Amendment of Liquor Regulation 2008

12. Schedule 2 [1] provides that licensees, bar staff and security personnel (ie bouncers or crowd controllers employed on or about licensed premises) in the Kings Cross precinct will need to successfully complete an approved RSA training course in order to renew their RSA competency cards. Such cards expire 5 years after they are issued.
13. Schedule 2 [2], [5] and [7] require licensees, bar staff and security personnel working in the Kings Cross precinct to hold a RSA competency card after 1 March 2013. This means that other existing certification of the completion of a RSA training course will no longer

be sufficient after that date for licensees, bar staff and security personnel in the Kings Cross precinct.

14. Schedule 2 [4] is a consequential amendment. Schedule 2 [3] and [6] will ensure that bar staff and security personnel cannot be permitted to work on or about licensed premises after 1 March 2013 in the Kings Cross precinct unless they hold a RSA competency card.
15. Schedule 2 [8] and [9] provide that the new offences relating to RSA competency cards in relation to the Kings Cross precinct may be dealt with by way of a penalty notice.

Schedule 3 Consequential amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

16. Schedule 3 ensures that any future extension by regulation of the Kings Cross precinct for the purposes of the Liquor Act 2007 will not affect the operation of section 148 of the *Law Enforcement (Powers and Responsibilities) Act 2002* which authorises the use by police officers of dogs for general drug detection without warrant in the existing area of that precinct.

ISSUES CONSIDERED BY COMMITTEE

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

Denial of compensation

17. Schedule 10, at proposed section 38, of the Bill provides that compensation is not payable by or on behalf of the State because of the enactment or operation of the Bill or relating to the enactment of the Bill.

The Committee is concerned that removing a right to compensation may impact on the rights and liberties of individuals. As it is not immediately apparent that individual rights and liberties would be affected, the Committee makes no further comment on this issue.

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

Henry VIII clause

18. Schedule 1[2] of the Bill outlines that regulations may amend Schedule 2 of the *Liquor Act 2007*. Schedule 2 of the *Liquor Act 2007* defines the precinct of Kings Cross.

The Committee considers that the inclusion of a clause that enables the amendment of legislation through regulation to be of great concern. However, as Schedule 2 defines the precinct of Kings Cross, the Committee does not consider this particular use of a 'Henry VIII clause' to be of concern and makes no further comment on this issue.

Commencement by proclamation

19. The Bill provides for the Act to commence on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. The Committee notes that as this Bill involves an all of government response, there

may be some administrative convenience to commencing sections of the Bill by proclamation. The Committee makes no further comment on this issue.

11. Petroleum (Onshore) Amendment (Royalties and Penalties) Bill 2012

Date introduced	23 October 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Chris Hartcher MP
Portfolio	Minister for Resources and Energy

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows:

- (a) to amend the *Petroleum (Onshore) Act 1991* to provide that the rate of royalty on petroleum production is to be prescribed by regulations under that Act,
- (b) to repeal provisions that confer a royalty holiday for the first 5 years of petroleum production and a reduced rate for the second 5 years of production and instead prescribe a flat rate of royalty of 10% of the value at the well-head of petroleum,
- (c) to increase certain penalties for offences under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*,
- (d) to confer jurisdiction on the Land and Environment Court to hear proceedings for offences under the *Petroleum (Onshore) Act 1991*,
- (e) to make consequential and minor amendments to provisions of the *Criminal Procedure Act 1986*, including enabling elections to be made with respect to summary proceedings for an indictable offence under the *Petroleum (Onshore) Act 1991*.

BACKGROUND

2. Exploration and mining in relation to coal seam gas has attracted much public attention and debate in the past few years. The legislative regime introduced in relation to such exploration and mining seeks to strike a balance between environmental concerns, including impacts on agricultural land, and the ability of the state to utilise a publicly-owned asset.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendments relating to royalties

Schedule 1.1 Petroleum (Onshore) Act 1991 No 84

5. Schedule 1.1 [1] provides for the rate of royalty payable by the holder of a petroleum title for petroleum recovered by the holder to be prescribed by the regulations. The rate may be determined as a percentage of the value at the well-head of the petroleum or by reference to such other matters as the Minister may determine.
6. Schedule 1.1 [2] provides for the Minister to determine the value at the well-head of the petroleum. Currently, the value is only determined by the Minister if the Minister and the holder of the petroleum title fail to agree on the value.
7. Schedule 1.1 [3] requires an approved measuring device to be installed at the well-head or another place approved by the Minister.

Schedule 1.2 Petroleum (Onshore) Regulation 2007

8. Schedule 1.2 prescribes the amount of royalty for petroleum as 10% of the value at the well-head of the petroleum. The Subschedule also repeals provisions that currently provide for a holiday from royalties for the first 5 years of commercial production and a reduced rate for the next 5 years, so that the full royalties are not currently payable for the first 10 years. The new royalty rate will apply to petroleum recovered on or after 1 January 2013.

Schedule 1.3 Coal Mine Health and Safety Amendment Act 2010 No 23

9. Schedule 1.3 omits an uncommenced amendment to a provision that is being substituted by Schedule 1.2.

Schedule 2 Amendments relating to penalties

Schedule 2.1 Criminal Procedure Act 1986 No 209

10. Schedule 2.1 [1] adds the offence of mining petroleum without an authority under section 7 of the *Petroleum (Onshore) Act 1991*, if the value of petroleum obtained is \$5,000 or more, to the list of indictable offences that are to be dealt with summarily unless the prosecutor or person charged elects otherwise. This is to make the treatment of this offence consistent with a similar offence under the *Mining Act 1992*.
11. An offence where the value of the petroleum obtained is less than \$5,000 is already required to be dealt with summarily unless the prosecutor elects otherwise.
12. Schedule 2.1 [2] omits a reference to an offence that will no longer be an indictable offence from a table listing indictable offences.

Schedule 2.2 Mining Act 1992 No 29

13. Schedule 2.2 increases the maximum monetary penalties for the following offences as follows:
 - (a) prospecting except in accordance with an authorisation—from \$22,000 to \$550,000 (for corporations) and \$110,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$55,000 (for corporations) and \$11,000 (for individuals) (Schedule 2.2 [1]),

- (b) mining except in accordance with an authorisation—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (Schedule 2.2 [2]),
- (c) unauthorised carrying out of mining purposes—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (Schedule 2.2 [3]),
- (d) stealing minerals—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (Schedule 2.2 [4]),
- (e) fraudulent removal and concealment of minerals by employees—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (Schedule 2.2 [5]),
- (f) fraudulent removal and concealment of minerals by partners—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) (Schedule 2.2 [6]),
- (g) breach of direction—from \$55,000 to \$1.1 million (for corporations) and from \$55,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (Schedule 2.2 [7]),
- (h) failing to comply with a requirement by an inspector or delaying, obstructing or impersonating an inspector—from \$110,000 to \$1.1 million (for corporations) and from \$22,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$1,100 to \$110,000 (for corporations) and from \$550 to \$22,000 (for individuals) (Schedule 2.2 [8]),
- (i) failure to pay royalties—from \$110,000 to \$1.1 million (for corporations) and from \$110,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$5,500 to \$110,000 (for corporations) and \$22,000 (for individuals) (Schedule 2.2 [9]),
- (j) obstructing a person exercising a function—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (Schedule 2.2 [10]),
- (k) contravention of an environmental condition of an authorisation or a mining lease—from \$110,000 to \$1.1 million (for corporations) and from \$55,000 to \$220,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$11,000 to \$110,000 (for corporations) and from \$5,500 to \$22,000 (for individuals) (Schedule 2.2 [11]),
- (l) contravention of any other condition of an authorisation or a mining lease— from \$22,000 to \$220,000 (for corporations) and from \$11,000 to \$22,000 (for individuals) and, in the case of the daily penalty for continuing the offence, from \$2,200 to \$22,000 (for corporations) and from \$1,100 to \$5,500 (for individuals) (Schedule 2.2 [12]).

14. Schedule 2.2 [13] requires a court that is considering the penalty for contravening an environmental condition of an authorisation or a mining lease to take into account the extent of the harm caused to the environment, mitigation and control measures, the foreseeability of any harm caused and the offender's control over the causes of the offence.
15. Schedule 2.2 [14] confers jurisdiction on the Land and Environment Court to deal summarily with corporations accused of offences relating to stealing minerals and the fraudulent removal and concealment of minerals or who fail to pay royalties.
16. Schedule 2.2 [15] increases the maximum fine that may be imposed by a Local Court for mining offences from \$22,000 to \$220,000.
17. Schedule 2.2 [16] enables a breach of environmental conditions, being conditions inserted under specified provisions, to be liable to the highest maximum penalty for breaches. The amendment continues the effect of a transitional provision that currently applies to the specified provisions.

Schedule 2.3 Petroleum (Onshore) Act 1991 No 84

18. Schedule 2.3 increases the maximum monetary penalties for the following offences as follows:
 - (a) prospecting except in accordance with a petroleum title—from \$22,000 to \$550,000 (for corporations) and \$110,000 (for individuals) and, in the case of the daily penalty for continuing the offence, imposing a penalty of \$55,000 (for corporations) and \$11,000 (for individuals) (Schedule 2.3 [1]),
 - (b) mining except in accordance with a petroleum title—from \$110,000 to \$1.1 million (for corporations) and from \$22,000 to \$220,000 (for individuals) (Schedule 2.3 [2]),
 - (c) failure to comply with a direction to give effect to conditions of a petroleum title—from \$11,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (Schedule 2.3 [3]),
 - (d) assaulting, hindering or obstructing a person exercising a power under the *Petroleum (Onshore) Act 1991* or contravening a condition of an exemption, suspension or consent or a direction or requirement made under that Act—from \$11,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (Schedule 2.3 [4]),
 - (e) contravention of a condition of a petroleum title related to environmental management—from \$110,000 to \$1.1 million (for corporations) and \$220,000 (for individuals) (Schedule 2.3 [5]),
 - (f) contravention of any other condition of a petroleum title—from \$22,000 to \$220,000 (Schedule 2.3 [5]).
19. Schedule 2.3 [6] requires a court that is considering the penalty for contravening a condition of a petroleum title related to environmental management to take into account the extent of the harm caused to the environment, mitigation and control measures, the foreseeability of any harm caused and the offender's control over the causes of the offence.

20. Schedule 2.3 [7] confers on the Land and Environment Court jurisdiction to deal summarily with offences under the *Petroleum (Onshore) Act 1991* and limits the jurisdiction of the Local Court to maximum penalties of 2,000 penalty units and imprisonment for 12 months. The offence of contravention of conditions of a petroleum title related to environmental management will no longer be an indictable offence but may be dealt with by the Land and Environment Court. That Court has jurisdiction to impose the maximum amount of monetary penalty provided for by the Act for any offence.

ISSUES CONSIDERED BY COMMITTEE

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

Indictable offences considered summarily

21. Schedule 2.1[1] provides that an offence in contravention of section 7 of the *Petroleum (Onshore) Act 1991* may be dealt with summarily.

The Committee is always concerned when indictable offences may be considered summarily. However, the Committee also notes that either a prosecutor or the person charged may elect for the matter not to be heard summarily. As such, the Committee makes no further comment in relation to this issue.

Property

22. Schedules 2.2 and 2.3 outline penalties in relation to activities undertaken on property owned by an individual or a corporation where such activities are governed by the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

The Committee is concerned that the Bill introduces onerous penalties in relation to the activities on privately owned land. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.

Excessive punishment

23. Schedules 2.2 and 2.3 increase, up to five-fold, the penalties payable by individuals in relation to breaches of the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*.

The Committee is concerned that individuals may be fined up to \$220,000 for activities undertaken on private property. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.

Freedom of speech

24. Schedules 2.2[10] and 2.3[4] outline penalties of up to \$220,000 payable by individuals in relation to the obstruction of a person exercising a function under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

The Committee notes that including penalties of up to \$220,000 in relation to obstructing a person exercising functions under the *Mining Act 1992* or the

***Petroleum (Onshore) Act 1991* may impact on the ability of an individual to protest, and therefore on their right to freedom of speech. However, given the overriding public interest in relation to the matters governed by the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*, the Committee makes no further comment on this issue.**

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

Commencement by proclamation

25. The Bill provides for the Act to commence on a day or days to be appointed by proclamation.

The Committee will always be concerned where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes the administrative requirements involved in commencing various aspects of this Bill, and makes no further comment on this issue.

Provides for a royalty to be set by regulation

26. Schedules 1.1[1] and 1.1[2] provide that the rate of the royalty payable by the holder of a petroleum title may be determined by the Minister with reference to any such matters as the Minister may determine.

The Committee considers that the determination of the rate of a royalty payable is a matter that may be properly included in legislation, rather than outlined in the regulations. The Committee also notes that in this instance, the legislation provides at Schedule 1.2 that the regulation be amended to prescribe the annual rate of royalty as 10 per cent. The Committee is pleased that the amendment of the regulation is outlined in the legislation for the consideration of Parliament.

12. Road Transport (General) Amendment (Private Car Parks) Bill 2012

Date introduced	25 October 2012
House introduced	Legislative Council
Minister responsible	The Hon. Duncan Gay MLC
Portfolio	Minister for Roads and Ports

PURPOSE AND DESCRIPTION

1. The object of this Bill is to prevent Roads and Maritime Services from being required by any preliminary discovery process to disclose information about registrable vehicles and registered operators of registrable vehicles if discovery is for the purpose of the recovery of private car park fees. Private car park fees are fees alleged to be payable under the terms and conditions of a contract, arrangement or understanding relating to the use of a car park (but not including car park fees recoverable under a written contract signed by the parties).

BACKGROUND

2. This Bill follows significant public concerns into the use of preliminary discovery provisions by private car park operators to obtain court orders directing Roads and Maritime Services to release personal information for the purpose of the recovery of private car park fees.

OUTLINE OF PROVISIONS

3. Clause 1 sets out the name (also called the short title) of the proposed Act.
4. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Road Transport (General) Act 2005 No 11

5. Schedule 1 [1] inserts proposed section 244B into the *Road Transport (General) Act 2005* to give effect to the object stated in the Overview.
6. Schedule 1 [3] inserts a transitional provision so that the new section will not apply to preliminary discovery orders made before the commencement of the section but will apply to preliminary discovery orders made after that commencement whenever the orders were applied for. Schedule 1 [2] provides for the making of savings and transitional regulations.

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

7. Schedule 1, clause 3 inserts a provision which provides that the new section does not apply to preliminary orders made before the commencement of that section. However it does apply to preliminary discovery orders made after the commencement but which were applied for before the commencement of the section.

The Committee notes the retrospective effect of provisions in the Bill as they relate to certain preliminary discovery applications, however given the purpose of the Bill makes no further comment.

Part Two - Regulations

1. Crime Commission Regulation 2012

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make provision with respect to the security checks of the staff of the New South Wales Crime Commission and associated persons under Part 6 of the *Crime Commission Act 2012*.
2. This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.
3. This Regulation is made under the *Crime Commission Act 2012*, including sections 77 and 86 (the general regulation-making power).

ISSUES CONSIDERED BY COMMITTEE

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

Privacy

4. Clause 4 of the regulation outlines that the Commissioner may at any time require an officer to furnish a statement of personal particulars in relation to the officer themselves or in relation to any other person who is associated with the officer. Section 73 of the principal Act defines associated persons as family members and business associates.
5. Clause 5 of the regulation outlines that the Commissioner may require an officer or an associate of the officer to provide a copy of a list of documents, including the most recent income tax return lodged by the individual [clause 5(2)(i)].
6. Clause 6 of the regulation outlines that the Commissioner may require an officer, or an applicant for a position as an officer, to provide imprints of their fingerprints. If the officer or applicant is a company or a partnership, the Commissioner may require the fingerprints of associates of the company or partnership. Whilst the Commission is required to destroy such imprints within six months [clause 6(3)], the Commission may retain the imprints for a further period if an officer is under investigation before the initial six months has lapsed.

The Committee notes that the powers of the Commissioner as outlined in clauses 4, 5 and 6 of the regulation impact on an individual's right to privacy. The Committee notes that the disclosure of information under clause 4 is to include a statement indicating that the affected individual consents to the conduct of inquiries. Therefore, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated with duties performed by such officers, the Committee makes no further comment in relation to this issue.

Freedom of association / Presumption of innocence

7. The regulation outlines that an officer who is required to furnish to the Commissioner a statement of personal particulars must also furnish to the Commissioner a statutory declaration concerning the officer's or applicant's association with known or reputed criminals.

The Committee notes that requiring an officer, or an applicant for the position of officer, of the Crime Commission to declare their association with individuals may impact on their freedom of association. The Committee also notes that the term 'reputed criminals' may be incompatible with the presumption of innocence. However, having regard to the nature of the employment of an officer of the Commission and the corruption and integrity risks associated with duties performed by such officers, the Committee makes no further comment in relation to this issue.

2. Water Management (General) Amendment (Lachlan Unregulated and Alluvial Water Sources Water Sharing Plan) Regulation 2012

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to make provision with respect to certain entitlements under the *Water Act 1912* to take water from the Lachlan Unregulated and Alluvial Water Sources, being entitlements that are to become access licences to which Part 2 of Chapter 3 of the *Water Management Act 2000* applies.
2. This Regulation is made under the *Water Management Act 2000*, including section 400 (the general regulation-making power) and clause 1 of Schedule 9.

ISSUES CONSIDERED BY COMMITTEE

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

Rule of law

3. The *Water Management (General) Amendment (Lachlan Unregulated and Alluvial Water Sources Water Sharing Plan) Regulation 2012* amends the *Water Management (General) Regulation 2011* through the insertion of clauses, including 84O, 84Q and 84R. Each of these clauses outlines that a subclause is taken to be inserted after a clause of a Schedule to the Act.

The Committee notes that the effect of the regulation is to amend the principal Act. The Committee also notes that clause 10 of Schedule 6A of the Act provides the regulations with the power to amend Schedule 6A. The Committee notes that changes to legislation are more appropriately achieved by way of an amending Act, rather than by regulation. However, given the previous advice provided to the Committee by the Minister dated 29 May 2012 (item 2 of Appendix 2 of this Digest) in relation to this issue, the Committee makes no further comment on this regulation.

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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