



## 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. BIOFUELS AMENDMENT BILL 2012

The Committee makes no comment in respect of the issues set in s8A(1) of the *Legislation Review Act 1987*.

### 2. COMPENSATION TO RELATIVES LEGISLATION AMENDMENT (DUST DISEASES) BILL 2012\*

The Committee makes no comment in respect of the issues in s 8A(1) of the *Legislation Review Act*.

### 3. CRIMES AMENDMENT (CONSORTING AND ORGANISED CRIME) BILL 2012

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

The Committee notes that providing a jury with the ability to find an individual guilty of an offence for which they have not been charged may have an impact on the concept of a fair trial, in circumstances where the alternative offence is outlined in the legislation and is a lesser offence and this is reasonable in the circumstances.

#### *Freedom of association*

The Committee will always be concerned where a class of persons may be subjected to discrimination resulting from their status of having been convicted of an indictable offence. The Committee is also concerned when individuals who may have not committed any offence are guilty of an offence by way of meeting or electronically communicating with convicted offenders.

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

#### *Insufficiently clear*

The Committee refers to Parliament whether the definition provided in the legislation is sufficiently clear given the potential impact of the offence.

The Committee refers to Parliament whether the absence of a definition for 'organised criminal activity' is acceptable in circumstances where 'organised criminal activity' is an element of an offence subject to a serious penalty.

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

#### *Non-reviewable decision/insufficiently clear*

The Committee refers to Parliament the question as to whether the inability to appeal official warnings constitutes a non-reviewable decision.

### 4. CRIMES (CRIMINAL ORGANISATIONS CONTROL) BILL 2012

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

*Sufficient notice to affected individuals*

Given the impact on the freedom of association on individuals who are considered members or associates of an organisation subject to a declaration, the Committee refers to Parliament whether providing notice via the Gazette and a newspaper is sufficient notice to affected individuals.

Whilst the Committee notes the Court's ability to make an interim control order in the absence of and without notice to the person in relation to whom the order is being made, the Committee notes that clause 16 requires that notice be provided to the affected individual within 28 days. The Committee refers to Parliament whether this timeframe is reasonable in the circumstances.

The Committee refers to Parliament whether a notice to an individual who is subject to an interim control order should be informed as to the location of the Court that will be hearing the application for the control order.

*Right to be present and make submissions by affected individuals*

Given the impact on the right to association on individuals who are considered members or associates of an organisation subject to a declaration, the Committee refers to Parliament whether limiting the ability of such individuals to be present and make submissions at the hearing to the discretion of the Judge is appropriate.

*Presumption of innocence*

The Committee refers to Parliament the appropriateness of interim control orders and control orders as they erode the presumption of innocence by controlling the association of individuals not necessarily found guilty of an offence.

*Opportunity to address allegations*

The Committee notes that the Judge is empowered to determine the nature of 'criminal intelligence' at clause 28(3). The Committee notes the importance of affected individuals having access to all of the information being used by the Court when making submissions, the Committee also recognises the role that confidential information plays in the proceedings affected by the Bill. The Committee considers the safeguards included in clause 28 to be appropriate in the circumstances.

*Freedom of Association*

The Committee notes "organising" or "planning" a serious criminal activity may constitute the *mens rea* of an offence, but does not necessarily constitute the *actus reus* of an offence. Given the impact on members of a declared organisation to associate freely with other members of that declared organisation, the Committee refers to Parliament whether the inclusion of "organising" and "planning" is appropriate in clause 9(1) of the Bill.

The Committee notes that the burden of proof in relation to criminal convictions is generally beyond reasonable doubt. The Committee also notes that burden of proof when deciding questions of fact in proceedings under the Act is to be decided on the balance of probabilities. The Committee refers to Parliament whether the inclusion "whether or not such involvement has resulted in criminal convictions" is an appropriate broadening of the category matters a Judge may consider, considering the affect on members of declared organisations to associate with each other.

The Committee notes that the consequences of two members of a declared organisation who are both subject to control orders is that they may not associate with each other, with this a limitation on both individuals' freedom of association in circumstances where neither individual has necessarily been charged with an offence. The Committee notes that clause 26 may be inconsistent with the principles of criminal law to make it an offence to associate with particular people. The Committee refers Division 3 of the Bill, which outlines the consequences of making an interim control order and control order, to Parliament as constituting an undue trespass on personal rights and liberties in relation to an individuals' right of freedom of association.

The Committee also notes that there is nothing explicitly in the Bill to indicate that the Bill does not intend that the powers contained within the Bill be used to diminish the freedom of individuals in New South Wales to participate in advocacy, protest, dissent or industrial action. As similar legislation in Australia has contained such provisions, the Committee refers this to Parliament for its consideration.

The Committee notes that the effect of clause 26A is to create an offence of recruiting another person to be a member of a declared organisation in circumstances where the recruiter is a controlled member. The Committee refers to Parliament whether this is imposed on the controlled member's freedom of association.

#### *Application of the Rules of Evidence*

It is not clear to the Committee why the rules of evidence do not apply to applications in relation to declared organisations. Given the impact on the liberty of a member of a declared organisation, the Committee refers to Parliament whether it is appropriate for the rules of evidence not to apply as outlined in clause 13.

#### *Duration of declaration – presumption of innocence*

The Committee notes that clause 9 outlines the circumstances in which the Judge must be satisfied in relation to the conduct and other characteristics of the members of the organisation. The Committee also notes that if a Judge can no longer be satisfied under clause 9 because of a change in membership, clause 11(3) may be inconsistent with the presumption of innocence. The Committee refers 11(3) to Parliament for its consideration.

#### *Right to privacy*

The Committee notes that whilst a register containing the names of declared organisations and controlled members may breach of the controlled members' right to privacy, in circumstances where offences exist in relation to two or more controlled members associating, it is reasonable in the circumstances to take measures to ensure all individuals are aware of the identity of controlled members.

#### *Right to privacy – deprivation of liberty*

The Committee notes that a requirement to disclose an individual's own identity may be seen as a breach of a right to privacy. The Committee notes the circumstances in which clause 16 requires the disclosure, being the service of notice. The Committee notes the requirement to remain at a particular place could be described as deprivation of liberty. The Committee also notes the circumstances in which clause 16 requires this, being the service of notice. As the Committee recognises the importance of affected individuals being provided with notice of an interim control order, the Committee considers clause 16(6)(7) to be reasonable in the circumstances.

*Limitation on appeal rights*

The Committee refers to Parliament the appropriateness of limiting an appeal as of right to being made within 28 days.

The Committee notes that clause 32 provides that any question of fact is to be decided on the balance of probabilities. The Committee also notes that if a decision to make a control order is based on facts being determined on the balance of probabilities, a change smaller than a "substantial change" may affect the Court's assessment of the appropriateness of control order as outlined in clause 19. The Committee refers to Parliament the appropriateness of the requirement of a "substantial change" as a prerequisite of an application for a variation or revocation of a control order.

*Strict Liability*

The Committee will note when legislation is drafted to provide for strict liability offences, and refers to Parliament whether it is appropriate for clause 19 to draft control orders in a strict liability manner as individuals who are subject to a control order have not necessarily been found guilty of an offence.

*Right to work*

The Committee refers to Parliament whether the list of activities, particularly employment activities, in clause 27 is appropriately broad in circumstances where it is applying to an individual who has not necessarily committed an offence and in circumstances where the duration of a control order may be indefinite.

*Rights of the Child*

The Committee refers the appropriateness of not differentiating between adult and children members of declared organisations.

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

*Right to natural justice*

The Committee notes that an affected individual's ability to seek recourse in relation to decision-makers under this Act has been removed in circumstances where those decision-makers act or purport to act in good faith. The Committee does not consider the restriction of 'good faith' renders this clause unreasonable in the circumstances.

The Committee notes that as clause 24 provides for rights of appeal, clause 35 should not be read in isolation. The Committee does not consider clause 35 to be unreasonable in light of the appeal rights included in clause 24.

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

*Matters in regulations rather than principal legislation*

The Committee notes that the practical function of clause 26(5)(f) is to broaden the potential associations that the person who is subject to a control order may engage in. The Committee also notes the benefit of the principal legislation is to provide certainty to individuals who may be the subject of a control order in relation to the types of associations that will be disregarded for the purposes of section 26. As clause 26(5)(f) is to the benefit of defendants, the Committee makes no further comment.

The Committee notes that the effect of clause 27 is to prohibit individuals who are the subject of interim control orders or control orders from undertaking certain types of employment and from possessing or using a firearm. In circumstances where individuals who have not necessarily been found guilty of an offence are being prohibited from undertaking otherwise lawful employment, the Committee refers to Parliament the appropriateness of regulations being used to prescribe further work that such individuals will be prohibited from undertaking.

The Committee considers the creation of an offence to be more appropriately undertaken by the legislature. The Committee refers to Parliament the appropriateness of a clause providing that the regulations may create offences punishable by penalties not exceeding 100 penalty units.

#### 5. EDUCATION AMENDMENT (RECORD OF SCHOOL ACHIEVEMENT) BILL 2012

The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.

#### 6. FIREARMS AMENDMENT (AMMUNITION CONTROL) BILL 2012

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

##### *Right to privacy*

The Committee notes that introducing legal requirements to provide personal details when purchasing goods may trespass on a person's right to privacy. However, the Committee is of the view that in these circumstances the public interest in providing assistance to police to investigate criminal behaviour overrides this interest.

##### *Seizure without a warrant*

Empowering police officers to obtain records without the need to show reasonable cause may in some circumstances trespass against personal rights and liberties. However, the Committee considers that the provisions in the Bill are designed to assist police in investigating and preventing criminal behaviour which endangers the public and as such the Committee makes no further comment in relation to these provisions.

##### *Strict liability*

The Committee notes the strict liability offences contained in the Bill however considers that the offences are designed to assist police in investigating criminal behaviour and support public safety. As such the Committee makes no further comment in relation to these provisions.

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

##### *Commencement by proclamation*

The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that commencing the Act by proclamation will allow time for appropriate procedures to be developed to support the objectives of the Act. The Committee also notes that commencement by proclamation will allow time to advise those affected of the new requirements under the Act. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.

#### 7. MINING LEGISLATION AMENDMENT (URANIUM EXPLORATION) BILL 2012

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

It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative. The Committee notes in these circumstances that any impact on rights as a result of this retrospective amendment is ameliorated by the amendment which permits a determination of an application under the previous regime.

It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative. The Committee notes that the insertion of the new section 7(2) merely removes a previous prohibition in relation to prospecting. The retrospective effect of the new section 7(2) maintains the law as it was in relation to mining uranium. As no individuals are affected by the retrospective drafting of the new section 7(2), the Committee makes no comment.

The Committee notes that this may be construed as racial discrimination. However, whilst Schedule 5 of the Bill may confirm the Crown's ownership of uranium in land that would be otherwise subject to the *Aboriginal Land Rights Act 1983*, Schedule 1 of the Bill has the same effect on all land in New South Wales. As the amendment to the *Aboriginal Land Rights Act* has the effect of confirming the effect on all land in New South Wales, the Committee does not consider that the Bill has an effect on the right to freedom from racial discrimination.

***Inalienable right to develop research, production and use of nuclear energy for peaceful purposes***

The Committee notes that provisions in this Bill appear to be consistent with the right under the *Treaty on the Non-Proliferation of Nuclear Weapons* to develop research, production and use of nuclear energy for peaceful purposes.

**8. REAL PROPERTY AMENDMENT (PUBLIC LANDS) BILL 2012**

The Committee makes no comment on the Bill in respect of issues set out in s81A(1) of the *Legislation Review Act 1987*.

**PART TWO – REGULATIONS**

**1. PROPOSED POSTPONEMENT OF THE REPEAL OF THE APIARIES REGULATION 2005**

That the Committee writes to the Minister for Primary Industries to advise that it does not have any concerns with the postponement of the repeal of the regulation.

**2. PROPOSED POSTPONEMENT OF THE REPEAL OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005**

That the Committee writes to the Minister for Local Government to advise that it does not have any concerns with the postponement of the repeal of the regulation.

## Part One - Bills

### 1. Biofuels Amendment Bill 2012

Date introduced	16 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon Chris Hartcher MP
Portfolio	Resources and Energy

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Biofuels Act 2007* to remove the requirement, which was to have begun on 1 July 2012, for primary wholesalers selling regular unleaded petrol to ensure that it is E10. The term E10 is defined in the Act to mean a petrol-ethanol blend that contains between 9% and 10% ethanol by volume, being ethanol that complies with a biofuel sustainability standard.
2. The Bill also makes a consequential amendment to the *Biofuels Regulation 2007*.

#### BACKGROUND

3. In 2009 the *Biofuels Act 2007* was amended to require a primary wholesaler to not sell regular unleaded petrol unless the petrol is E10. The requirement was due to commence on 1 July 2012. This Bill amends the *Biofuels Act 2007* to remove this requirement.

#### 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 Biofuels Act 2007 No 23

6. Schedule 1 [2] removes the requirement referred to in the purpose and description. Schedule 1 [1], [3] and [4] make consequential amendments.
7. Schedule 1 [5] enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act or any other amending Act.

#### Schedule 2 Amendment of Biofuels Regulation 2007

8. Schedule 2 makes an amendment that is consequential on the removal of the requirement referred to in the Overview.

#### ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment in respect of the issues set in s8A(1) of the *Legislation Review Act 1987*.**



## 2. Compensation to Relatives Legislation Amendment (Dust Diseases) Bill 2012\*

Date introduced	16 February 2012
House introduced	Legislative Assembly
Member responsible	The Hon. Paul Lynch MP
	*Private Member

### PURPOSE AND DESCRIPTION

1. This Bill amends the *Compensation to Relatives Act 1897* and the *Dust Diseases Tribunal Act 1989* with respect to damages recoverable by the relatives or estate of a person whose death has resulted from a dust-related condition.
2. The objects of this Bill are as follows:
  - (c) to provide that damages recoverable in a court action brought by the relatives of a deceased person must not be reduced by any non-economic loss damages (such as for pain and suffering) recovered or recoverable by the estate of the deceased person in the Dust Diseases Tribunal,
  - (d) to enable the estate of the deceased person to bring proceedings, within 12 months after the person's death, to recover non-economic loss damages in the Dust Diseases Tribunal.
3. The Bill also amends the *Law Reform (Miscellaneous Provisions) Act 1944* to provide that the damages recoverable by the estate of a deceased person do not, under that Act, include damages for the loss of capacity to provide domestic services.
4. This Bill gives effect to the recommendations made by the New South Wales Law Reform Commission in its report entitled *Compensation to Relatives* (Report No 131).

### BACKGROUND

5. As stated in the Agreement in Principle speech, this Bill seeks to address anomalies in the legislative framework relating to those exposed to asbestos and of their relatives and dependants.
6. In November 2011 the NSW Law Reform Commission tabled Report No 131, *Compensation to Relatives*. This Bill seeks to give legislative effect to the recommendations for legislative change contained in that report.

### OUTLINE OF PROVISIONS

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

9. Schedule 1 makes the amendments described in the above.

#### ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment in respect of the issues in s 8A(1) of the *Legislation Review Act*.**

### 3. Crimes Amendment (Consorting and Organised Crime) Bill 2012

Date introduced	14 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith MP
Portfolio	Attorney General

#### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Crimes Act 1900:
  - (a) to create a new offence of firing at a dwelling-house, with a higher penalty than the existing general offence for firing at a dwelling-house, where the offence occurs in the course of an organised criminal activity;
  - (b) to change the mental element for the offence of participating in a criminal group so that it is no longer necessary to prove that the defendant knowingly participated in the criminal group and knowingly or recklessly contributed to the occurrence of a criminal activity;
  - (c) to create new offences relating to participation in criminal groups, with higher penalties than the existing general offence for participating in a criminal group, where the defendant directed the activities of the criminal group or the activities of the criminal group were organised and on-going;
  - (d) to make it an offence to receive a material benefit from a criminal group that is derived from its criminal activities; and
  - (e) to replace and clarify the offence of consorting with convicted offenders.

#### BACKGROUND

2. In 2002-2003, the then New South Wales Government introduced major reforms in gun laws in New South Wales, including the offence of shooting into a dwelling house or building with reckless disregard for the safety of any person.
3. Following an increase in media coverage of 'drive-by' shootings in late 2011 and early 2012, the Premier announced the introduction of a package of reforms to "combat organised crime in further support of police in their war on drive-by shootings". The reforms include *Crimes Amendment (Consorting and Organised Crime) Bill 2012* (introduced on 14 February); *Crimes (Criminal Organisations Control) Bill 2012* (introduced on 15 February); *Firearms Amendment (Ammunition Control) Bill 2012* (introduced on 15 February).

4. The new legislation includes an extension of the offence of shooting into a dwelling house or building, where the offence occurs in the course of organised criminal activity. According to the Attorney General, Greg Smith MP:

"The primary goal of this new offence is not to reduce the incidence of shootings; police work continues to do that. The primary goal of the new offence is to recognise that a greater degree of criminality is involved where these shootings occur in connection with the activities of criminal groups, and to ensure that this is reflected in appropriately high penalties."

5. The organised crime/gang element of the gun violence committed during this period has drawn significant media attention and public concern.
6. In 2009, the then NSW Government introduced the *Crimes (Criminal Organisations Control) Act 2009* to address issues relating to outlaw motorcycle gangs. This Act was declared invalid by the High Court in June 2011 as unconstitutional. This suite of legislation is also a response to this ruling, as the Attorney-General, Greg Smith explained during the Agreement in Principle debate,

"The Government is determined to ensure that the NSW Police Force has adequate tools to deal with organised crime, and this bill represents part of a suite of reforms aimed at achieving that. The bill introduces a new aggravated form of drive-by shooting, introduces new offences relating to criminal groups, and modernises the offence of consorting, as well as extending and clarifying its application."

## OUTLINE OF PROVISIONS

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

### Schedule 1 Amendment of Crimes Act 1900 No 40

#### Firing at dwelling-houses

9. Schedule 1 [1] provides for a new offence of firing a firearm at a dwelling-house or other building in the course of an organised criminal activity, with reckless disregard for the safety of any person. The maximum penalty is imprisonment for 16 years. The maximum penalty for the existing general offence of firing at a dwelling-house or building, with reckless disregard for the safety of any person, is imprisonment for 14 years.
10. Schedule 1 [2] provides for alternative verdicts in relation to prosecutions for the new offence.

#### Participation in criminal groups

11. The Crimes Act 1900 contains several offences relating to participation in criminal groups.
12. Schedule 1 [4] changes the mental element for the existing general offence of participating in a criminal group. At present, it is necessary to prove that the defendant

knew that the group was a criminal group and knew, or was reckless as to whether, his or her participation contributed to the occurrence of a criminal activity.

13. As a result of the amendment, it will be necessary only to prove that the defendant knew, or ought reasonably to have known, that the group was a criminal group and knew, or ought reasonably to have known, that his or her participation in the criminal group contributed to the occurrence of a criminal activity.
14. Schedule 1 [4] also provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group by directing any of its activities. In this case, knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 10 years.
15. Schedule 1 [5] provides for a new offence (with a higher penalty than the existing general offence of participating in a criminal group) of participating in a criminal group whose activities are organised and on-going. Knowledge that the group is a criminal group, and knowledge or recklessness as to whether the participation contributes to the occurrence of a criminal activity, is required. The maximum penalty is imprisonment for 15 years.
16. Schedule 1 [7] provides for alternative verdicts in relation to prosecutions for the new offences.

#### **Receiving benefits derived from criminal activities of criminal groups**

17. Schedule 1 [6] makes it an offence to receive from a criminal group a material benefit derived from the criminal activities of the criminal group, knowing that the group is a criminal group and knowing, or being reckless as to whether, the benefit is derived from criminal activities of the criminal group. It is not necessary to prove participation in the criminal group. The offence carries a maximum penalty of imprisonment for 5 years.
18. Schedule 1 [8] makes the offence an alternative verdict on a charge of participating in a criminal group.
19. Schedule 1 [3] is a consequential amendment.

#### **Consorting with convicted offenders**

20. Schedule 1 [9] provides for a new offence of consorting with convicted offenders. A person will be guilty of the new offence if the person:
  - (a) habitually consorts with convicted offenders, and
  - (b) consorts with those convicted offenders after having been given an official warning in relation to each of those convicted offenders.
21. A convicted offender is any person who has been convicted of an indictable offence (excluding the offence of consorting). Spent convictions will also be excluded by operation of the Criminal Records Act 1991, section 12.

22. The new offence makes it clear that:
- (a) habitual consorting requires the defendant, at a minimum, to have consorted with at least 2 convicted offenders and to have consorted with each of those offenders on at least 2 occasions, and
  - (b) the defendant is guilty of an offence only if the defendant consorts with convicted offenders after having been warned by a police officer that each convicted offender is a convicted offender and that consorting with a convicted offender is an offence.
23. The existing consorting offence (which is repealed by Schedule 1 [10]) does not describe what is meant by habitual consorting, and does not require the defendant to have been given an official warning.
24. The new offence clarifies the circumstances in which consorting is permitted, such as between family members or in the course of lawful employment, the lawful operation of a business, training or education.
25. The new offence also makes it clear that consorting can occur in person or by any other means, including by electronic or other form of communication.
26. The new offence is an indictable offence with a maximum penalty of imprisonment for 3 years, or a fine of 150 penalty units, or both.
27. Schedule 1 [11] provides for the Ombudsman to review the operation of the new offence at the end of the period of 2 years from its commencement.

#### Schedule 2 Consequential amendment of other Acts

28. Schedule 2 makes amendments to other Acts that are consequential on the amendments described above.

#### ISSUES CONSIDERED BY COMMITTEE

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

29. Proposed sections 93GA(4) and 93U(2) provide that in circumstances where a jury does not find an individual guilty of a particular charge, it may find the individual guilty of an alternative, lesser offence. The Committee notes that this has the effect of enabling a court to find a person guilty of an offence for which they have not been charged.

**The Committee notes that providing a jury with the ability to find an individual guilty of an offence for which they have not been charged may have an impact on the concept of a fair trial, in circumstances where the alternative offence is outlined in the legislation and is a lesser offence and this is reasonable in the circumstances.**

##### *Freedom of association*

30. The Bill outlines at proposed section 93X(1) that a person who habitually consorts with individuals who have been convicted of an indictable offence and continues to consort with those convicted offenders after having been given an official warning in relation to each of those convicted offenders, is guilty of an offence.

31. In New South Wales an indictable offence is an offence which must be dealt with by indictment. The only alternative offences are summary offences or which carry two years imprisonment or less as the maximum penalty. Indictable offences form the majority of offences in New South Wales and, as such, a sizeable amount of the population has been convicted of an indictable offence.

**The Committee will always be concerned where a class of persons may be subjected to discrimination resulting from their status of having been convicted of an indictable offence. The Committee is also concerned when individuals who may have not committed any offence are guilty of an offence by way of meeting or electronically communicating with convicted offenders.**

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

*Insufficiently clear*

32. The Committee notes that the definition of 'consort' provided by the Bill in the proposed section 93W does not define the word 'consort' but only provides that it can be done through various means, including electronic or other form.

**The Committee refers to Parliament whether the definition provided in the legislation is sufficiently clear given the potential impact of the offence.**

33. The Committee notes that the Bill contains the term 'organised criminal activity' as an element of an offence but there is no definition provided in the legislation as to what constitutes 'organised criminal activity'.

**The Committee refers to Parliament whether the absence of a definition for 'organised criminal activity' is acceptable in circumstances where 'organised criminal activity' is an element of an offence subject to a serious penalty.**

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

*Non-reviewable decision/insufficiently clear*

34. The Bill clarifies the offence of consorting in section 93X. The offence of consorting is satisfied by a person who habitually consorts with people who has been convicted of an indictable offence after having been an official warning in relation to each of those convicted offenders. The section requires that a person consort with at least two convicted offenders and that the consorting has occurred on at least two occasions. Official warnings are given by police officers either orally or in writing that a convicted offender is a convicted offender and that consorting with a convicted offender is an offence.
35. The offence requires the receipt of at least two official warnings [section 93X(1)(b)]. There is nothing in the legislation that enables an individual to appeal the receipt of official warnings. It would appear that the only reviewable decision is the charge of consorting.

**The Committee refers to Parliament the question as to whether the inability to appeal official warnings constitutes a non-reviewable decision.**

## 4. Crimes (Criminal Organisations Control) Bill 2012

Date introduced	15 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Greg Smith SC MP
Portfolio	Attorney General

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to re-enact the *Crimes (Criminal Organisations Control) Act 2009* which was declared invalid by the High Court on 23 June 2011 (*Wainohu v State of NSW*) on the basis that a Judge making a declaration under the Act that an organisation was a criminal organisation was not required to provide reasons for making the declaration (applying the Kable principle, the Court found that a discretion but not a statutory obligation to provide reasons undermined the institutional integrity of the Supreme Court). The proposed re-enactment of the Act imposes an obligation to provide reasons.
2. In order to disrupt and restrict the activities of criminal groups, the Act provided that an eligible Judge of the Supreme Court could, on the application of the Commissioner of Police, declare an organisation to be subject to the Act if its members associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and it represents a risk to public safety and order in this State. As a consequence of the declaration of an organisation, the Supreme Court has jurisdiction on the application of the Commissioner of Police to make a control order against a member of the organisation that prevents the person associating with other controlled members of the organisation and from holding a number of statutory authorities (eg security, firearms or liquor licences).
3. The Act provided that the eligible Judge, when making a declaration, was not bound by the rules of evidence and could take into account confidential criminal intelligence (with an obligation to maintain the confidentiality of criminal intelligence but without restricting disclosure to courts, the Attorney General and persons reviewing the operation of the legislation). The requirement to give reasons will be subject to standard arrangements made by judicial officers to preserve confidentiality where that is necessary.

### BACKGROUND

4. Various Australian jurisdictions have sought to introduce legislation that controls organisations considered to engage in criminal conduct, and also to control the members of those organisations. South Australian legislation was declared invalid by the High Court on the grounds of that it obliged magistrates to make certain rulings based on determinations by the Attorney General, which was found to be incompatible with the Magistrate Court's integrity. The New South Wales *Crimes (Criminal Organisations Control) Act 2009* which was declared invalid by the High Court on 23 June 2011 as outlined above in the Purpose and Description.



5. High Court challenges to the legislation that was declared invalid also included the argument that the legislation impinged on an implied constitutional right to political communication and association. The High Court did not indicate whether the legislation would be declared invalid on that basis.

## OUTLINE OF PROVISIONS

### Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act, including *serious criminal activity*, *member of an organisation* and *criminal intelligence*.

Clause 4 provides for the extraterritorial operation of the proposed Act.

### Part 2 Declared organisations

**Clause 5** provides for Judges of the Supreme Court who consent to being eligible Judges for the purposes of the proposed Part to be declared to be eligible Judges by the Attorney General.

**Clause 6** enables the Commissioner of Police to apply for a declaration in relation to a particular organisation as described in the Overview above and sets out the requirements for such an application.

**Clause 7** requires notice of the making of the application to be published in the Gazette and in at least one newspaper circulating throughout New South Wales inviting members of the organisation concerned and other persons who may be directly affected (whether or not adversely) by the outcome of the application to make submissions to the eligible Judge at a hearing to be held on a date specified in the notice.

**Clause 8** gives the persons referred to in the notice the right to be present and to make submissions at the hearing unless information to be disclosed at the hearing involves criminal intelligence. Other persons who may be directly affected may also be present and make submissions with leave. Provision is also made to enable submissions to be made in private in certain circumstances.

**Clause 9** enables the eligible Judge to make the declaration sought by the Commissioner if the eligible Judge is satisfied that members of the organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order in this State. The proposed section sets out the matters the eligible Judge may take into account in deciding whether or not to make a declaration.

**Clause 10** requires notice to be given of the making of the declaration in the Gazette and in at least one newspaper circulating throughout the State.

**Clause 11** provides for the duration of declarations.

**Clause 12** provides for the revocation of declarations.

**Clause 13** provides that the rules of evidence do not apply to the hearing of an application for a declaration. It also provides that an eligible Judge is required to provide reasons for making or revoking the declaration or refusing the application.

### Part 3 Control of members of declared organisations

#### *Division 1 Interim control orders*

**Clause 14** enables the Supreme Court, on the application of the Commissioner of Police, to make an interim control order in relation to one or more members of a declared organisation pending the hearing and final determination of a confirmatory control order in relation to the

member or members concerned. The order may be made in the absence of, and without notice to, the member concerned but only takes effect when the member is notified of its making.

**Clause 15** states that an interim control order takes effect when notice of it is served personally on the member concerned.

**Clause 16** sets out the information that must be included in the notice served on the member. This includes the grounds on which the interim control order was made, an explanation of the ramifications of the making of the order and an explanation of the right to object to the making of the order at the hearing for the making of the confirmatory control order.

**Clause 16A** enables the Supreme Court to make an order for substituted service of notice of an interim control order on the person to whom it relates if it has not been possible to personally serve the notice of the order and (if substituted service also fails) to order its public notification.

**Clause 17** provides for the duration of interim control orders.

**Clause 18** requires the Supreme Court to hear applications for confirmatory control orders as expeditiously as possible in hardship cases.

### *Division 2 Control orders*

**Clause 19** provides for the making by the Supreme Court of confirmatory control orders.

**Clause 20** enables the member the subject of an order to appear at the hearing for the making of the order and to make submissions in relation to the application for the control order.

**Clause 21** provides for the form of a control order, including a requirement that it specify the right to appeal against its making.

**Clause 22** provides for when control orders take effect.

**Clause 23** provides for the duration of control orders.

**Clause 24** provides for appeals in relation to control orders.

**Clause 25** provides for the variation and revocation of control orders.

### *Division 3 Consequences of making of interim control orders and control orders*

**Clause 26** creates offences relating to a controlled member of a particular declared organisation associating with another controlled member of the same organisation.

**Clause 26A** makes it an offence for a controlled member of a declared organisation to recruit another person to become a member of the organisation.

**Clause 27** provides for the suspension and revocation of authorisations to carry on prescribed activities held by a controlled member on the taking effect of interim control orders and control orders, respectively.

## **Part 4 Miscellaneous**

**Clause 28** provides protections for criminal intelligence.

**Clause 29** provides protections for certain submissions.

**Clause 30** provides for the Commissioner of Police to keep a register of information relating to declared organisations and controlled members.

**Clause 30A** enables regulatory authorities having functions under legislation relating to authorisations to carry on occupations and activities to enter into arrangements with the Commissioner of Police for the supply of information (including criminal intelligence) concerning declared organisations and their members and associates to assist them in exercising those functions.

**Clause 31** requires the Attorney General to be given notice of applications under the proposed Act and the right to be present and to make submissions at the hearings of the applications.

**Clause 32** states the burden of proof in proceedings under the proposed Act.

**Clause 33** enables the Commissioner of Police to delegate functions with respect to the categorisation of information as criminal intelligence.

**Clause 34** provides immunity from civil and criminal liability for persons exercising functions under the proposed Act and for the Crown.

**Clause 35** prevents challenge or review by a court (other than by way of appeal under proposed section 24) or administrative body of the exercise of certain functions under the proposed Act.

**Clause 35A** makes it an offence for a person to fail to comply with a request by a police officer to disclose his or her identity or to give a false name or incorrect address.

**Clause 36** provides for proceedings for offences under the proposed Act or regulations made under the proposed Act.

**Clause 37** enables the making of rules of court.

**Clause 38** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 39** provides for the Ombudsman to keep under scrutiny, and report on, the exercise of powers by police under the proposed Act for a period of 4 years after the commencement of the proposed Act.

**Clause 39A** repeals the *Crimes (Criminal Organisations Control) Act 2009*, which was declared invalid by the High Court.

**Clause 40** provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

## Schedule 1 Amendment of Acts and Regulation

**Schedule 1** amends the following Acts and Regulation to re-enact provisions inserted by or in connection with the *Crimes (Criminal Organisations Control) Act 2009*:

- (a) *Bail Act 1978*,
- (b) *Commercial Agents and Private Inquiry Agents Act 2004*,
- (c) *Criminal Assets Recovery Act 1990*,
- (d) *Criminal Procedure Act 1986*,
- (e) *Criminal Records Regulation 2004*,
- (f) *Liquor Act 2007*,
- (g) *Motor Dealers Act 1974*,
- (h) *Motor Vehicle Repairs Act 1980*,
- (i) *Pawnbrokers and Second-hand Dealers Act 1996*,
- (j) *Surveillance Devices Act 2007*,
- (k) *Tow Truck Industry Act 1998*.

## ISSUES CONSIDERED BY COMMITTEE

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

#### *Sufficient notice to affected individuals*

6. Clause 7 of the Bill outlines that an application for a declaration in relation to an organisation requires the publication of a notice in relation to the application, to be published in the Gazette and at least one newspaper circulating throughout the State.
7. Clause 9(3) enables a Judge to make a declaration whether or not any of the persons referred to in section 8 are present or make submissions.

**Given the impact on the freedom of association on individuals who are considered members or associates of an organisation subject to a declaration,**

**the Committee refers to Parliament whether providing notice via the Gazette and a newspaper is sufficient notice to affected individuals.**

8. Clause 14 enables the Court to make an interim control order in relation to a person in the absence of, and without notice to, the person in relation to whom the order is being made.

**Whilst the Committee notes the Court's ability to make an interim control order in the absence of and without notice to the person in relation to whom the order is being made, the Committee notes that clause 16 requires that notice be provided to the affected individual within 28 days. The Committee refers to Parliament whether this timeframe is reasonable in the circumstances.**

9. Clause 16 outlines the information that is to be provided to individuals who are subject to an interim control order. This includes the date on which, and the time at which, the hearing of the application for the control order is to be heard.

**The Committee refers to Parliament whether a notice to an individual who is subject to an interim control order should be informed as to the location of the Court that will be hearing the application for the control order.**

#### *Right to be present and make submissions by affected individuals*

10. Clause 8(2) of the Bill outlines that a member of an organisation that is subject to an application for declaration who has not been "specified" in the application may be present and make a submission at the hearing only with the leave of the Judge.

**Given the impact on the right to association on individuals who are considered members or associates of an organisation subject to a declaration, the Committee refers to Parliament whether limiting the ability of such individuals to be present and make submissions at the hearing to the discretion of the Judge is appropriate.**

#### *Presumption of innocence*

11. Division 1 of the Bill outlines the circumstances in which an interim control order may be made. Division 2 of the Bill outlines the circumstances in which a control order may be made. Interim control orders and control orders may be made in circumstances where individuals have not been convicted of a specific crime such as associating with another person for any particular purpose or the association would have led to the commission of an offence.

**The Committee refers to Parliament the appropriateness of interim control orders and control orders as they erode the presumption of innocence by controlling the association of individuals not necessarily found guilty of an offence.**

#### *Opportunity to address allegations*

12. Clause 8(3) of the Bill outlines that the Commissioner may object to any person referred to in subsection (1) or (2) being present during any part of the hearing in which information classified by the Commissioner as criminal intelligence is disclosed.

The Committee notes that the Judge is empowered to determine the nature of 'criminal intelligence' at clause 28(3). The Committee notes the importance of affected individuals having access to all of the information being used by the Court when making submissions, the Committee also recognises the role that confidential information plays in the proceedings affected by the Bill. The Committee considers the safeguards included in clause 28 to be appropriate in the circumstances.

### *Freedom of Association*

13. Clause 9(1) of the Bill outlines that if a judge is satisfied that members of an organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and the organisation represents a risk to public safety and order, the Judge may make a declaration that the organisation is a declared organisation.
14. Clause 9(2) of the Bill outlines the matters that a Judge may have regard to when making a declaration, including whether current or former members of the organisation have been or are involved in serious criminal activity, whether or not such involvement has resulted in criminal convictions.

The Committee notes "organising" or "planning" a serious criminal activity may constitute the *mens rea* of an offence, but does not necessarily constitute the *actus reus* of an offence. Given the impact on members of a declared organisation to associate freely with other members of that declared organisation, the Committee refers to Parliament whether the inclusion of "organising" and "planning" is appropriate in clause 9(1) of the Bill.

The Committee notes that the burden of proof in relation to criminal convictions is generally beyond reasonable doubt. The Committee also notes that burden of proof when deciding questions of fact in proceedings under the Act is to be decided on the balance of probabilities. The Committee refers to Parliament whether the inclusion "whether or not such involvement has resulted in criminal convictions" is an appropriate broadening of the category matters a Judge may consider, considering the affect on members of declared organisations to associate with each other.

15. Clause 26 outlines the consequences of interim control orders and control orders. A controlled member of a declared organisation who associates with another controlled member of the declared organisation is guilty of an offence, with a maximum penalty of imprisonment for two years. This increases to a maximum penalty of imprisonment for three years in circumstances where the association occurs on three or more occasions within three months. The period of imprisonment is increased to five years in circumstances where a controlled member has been previously convicted under clause 26.

The Committee notes that the consequences of two members of a declared organisations who are both subject to control orders is that they may not associate with each other, with this a limitation on both individual's freedom of association in circumstances where neither individual has necessarily been charged with an offence. The Committee notes that clause 26 may be inconsistent with the principles of criminal law to make it an offence to associate with particular people. The Committee refers Division 3 of the Bill,

which outlines the consequences of making an interim control order and control order, to Parliament as constituting an undue trespass on personal rights and liberties in relation to an individuals' right of freedom of association.

The Committee also notes that there is nothing explicitly in the Bill to indicate that the Bill does not intend that the powers contained within the Bill be used to diminish the freedom of individuals in New South Wales to participate in advocacy, protest, dissent or industrial action. As similar legislation in Australia has contained such provisions, the Committee refers this to Parliament for its consideration.

16. Clause 26A outlines that a person who is a controlled member of a declared organisation who recruits another person to become a member of the organisation is guilty of an offence with a maximum penalty of five years imprisonment.

The Committee notes that the effect of clause 26A is to create an offence of recruiting another person to be a member of a declared organisation in circumstances where the recruiter is a controlled member. The Committee refers to Parliament whether this is imposed on the controlled member's freedom of association.

#### *Application of the Rules of Evidence*

17. Clause 13 outlines that the rules of evidence do not apply to the hearing of an application in relation to declared organisations.

It is not clear to the Committee why the rules of evidence do not apply to applications in relation to declared organisations. Given the impact on the liberty of a member of a declared organisation, the Committee refers to Parliament whether it is appropriate for the rules of evidence not to apply as outlined in clause 13.

#### *Duration of declaration – presumption of innocence*

18. Clause 11(2) outlines a declaration remains in force for a period of three years, unless revoked or renewed. Clause 11(3) outlines that a change in the name or membership of a declared organisation does not affect the declaration.

The Committee notes that clause 9 outlines the circumstances in which the Judge must be satisfied in relation to the conduct and other characteristics of the members of the organisation. The Committee also notes that if a Judge can no longer be satisfied under clause 9 because of a change in membership, clause 11(3) may be inconsistent with the presumption of innocence. The Committee refers 11(3) to Parliament for its consideration.

#### *Right to privacy*

19. Clause 30 provides that the Commissioner must keep a register outlining the names of declared organisations and the names of any controlled members of the declared organisations. Information is not to be published until 28 days after the control order is made and the information published on the register is to be provided to members of the public in any manner approved by the Commissioner.

**The Committee notes that whilst a register containing the names of declared organisations and controlled members may breach of the controlled members' right to privacy, in circumstances where offences exist in relation to two or more controlled members associating, it is reasonable in the circumstances to take measures to ensure all individuals are aware of the identity of controlled members.**

*Right to privacy – deprivation of liberty*

20. Clause 16(6) provides a police officer who has reasonable cause to suspect that a person is a person on whom notice of the making of an interim control order is required to be served may request the person to disclose his or her identity and request the person to remain at a particular place for such period (not exceeding two hours) as is reasonably necessary to serve the notice. Clause 16(7) provides a police officer with the power to detain the person at that place for such period (not exceeding two hours) in circumstances when the person refuses or fails to comply with a request to remain at a particular place.

**The Committee notes that a requirement to disclose an individual's own identity may be seen as a breach of a right to privacy. The Committee notes the circumstances in which clause 16 requires the disclosure, being the service of notice. The Committee notes the requirement to remain at a particular place could be described as deprivation of liberty. The Committee also notes the circumstances in which clause 16 requires this, being the service of notice. As the Committee recognises the importance of affected individuals being provided with notice of an interim control order, the Committee considers clause 16(6)(7) to be reasonable in the circumstances.**

*Limitation on appeal rights*

21. Clause 19 enables a Court to make a control order in relation to a person. Clause 23 provides that a control order remains in force until it is revoked. Clause 24 outlines that an appeal as of right (on a question of law) must be made within 28 days unless the Court of Appeal gives leave for it to be made after that time.

**The Committee refers to Parliament the appropriateness of limiting an appeal as of right to being made within 28 days.**

22. Clause 19 outlines the considerations that the Court may have in relation to ordering a control order in relation to a person. Clause 25 indicates that an application to vary or revoke a control order can only be made with leave and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.

**The Committee notes that clause 32 provides that any question of fact is to be decided on the balance of probabilities. The Committee also notes that if a decision to make a control order is based on facts being determined on the balance of probabilities, a change smaller than a "substantial change" may affect the Court's assessment of the appropriateness of control order as outlined in clause 19. The Committee refers to Parliament the appropriateness of the requirement of a "substantial change" as a prerequisite of an application for a variation or revocation of a control order.**

### *Strict Liability*

23. Clause 19 outlines that in order for a Court to make a control order, the Court is to be satisfied that the person is a member of a particular organisation or is or purports to be a former member of a particular declared organisation but has an on-going involvement with the organisation and its activities.

**The Committee will note when legislation is drafted to provide for strict liability offences, and refers to Parliament whether it is appropriate for clause 19 to draft control orders in a strict liability manner as individuals who are subject to a control order have not necessarily been found guilty of an offence.**

### *Right to work*

24. Clause 27 places a prohibition on carrying out certain activities when interim control orders or control orders take effect. These include employment at a casino, as a security guard, as a pawnbroker, as a private inquiry agent, as a tow truck driver, as a care salesman, as a repairer of motor vehicles, as a seller of liquor, as a bookmaker, trainer, owner or jockey of horses or as an owner, trainer or other person associated with greyhound or harness racing.

**The Committee refers to Parliament whether the list of activities, particularly employment activities, in clause 27 is appropriately broad in circumstances where it is applying to an individual who has not necessarily committed an offence and in circumstances where the duration of a control order may be indefinite.**

### *Rights of the Child*

25. There is nothing in the Bill that would restrict its application to people 18 years and older. It is not clear how members of a declared organisation who are under the age of 18 years would be treated under the Bill.

**The Committee refers the appropriateness of not differentiating between adult and children members of declared organisations.**

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

#### *Right to natural justice*

26. Clause 34 provides that no civil or criminal liability attaches to the Attorney General, the Commissioner, a police officer or other person exercising functions under this Act or the Crown in respect of an act or omission in good faith in the exercise or discharge or purported exercise or discharge of a function conferred by or under this Act.

**The Committee notes that an affected individual's ability to seek recourse in relation to decision-makers under this Act has been removed in circumstances where those decision-makers act or purport to act in good faith. The Committee does not consider the restriction of 'good faith' renders this clause unreasonable in the circumstances.**

27. Clause 35 provides that any person who has a function with respect to the making of any declaration, interim control order or control order cannot be challenged, reviewed or



quashed in the exercise of the function in any court or administrative review body, except under clause 24 which provides a right of appeal within a limited timeframe without leave.

**The Committee notes that as clause 24 provides for rights of appeal, clause 35 should not be read in isolation. The Committee does not consider clause 35 to be unreasonable in light of the appeal rights included in clause 24.**

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

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

28. Clause 26(5)(f) enables the regulations to outline associations which are to be disregarded for the purposes of applying to a defendant to whom an interim control order relates if the defendant proves that the association was reasonable in the circumstances.

**The Committee notes that the practical function of clause 26(5)(f) is to broaden the potential associations that the person who is subject to a control order may engage in. The Committee also notes the benefit of the principal legislation is to provide certainty to individuals who may be the subject of a control order in relation to the types of associations that will be disregarded for the purposes of section 26. As clause 26(5)(f) is to the benefit of defendants, the Committee makes no further comment.**

29. Clause 27(6)(m) enables the regulation to outline any other activity that an individual who is subject to an interim control order or control order may be prohibited from carrying on.

**The Committee notes that the effect of clause 27 is to prohibit individuals who are the subject of interim control orders or control orders from undertaking certain types of employment and from possessing or using a firearm. In circumstances where individuals who have not necessarily been found guilty of an offence are being prohibited from undertaking otherwise lawful employment, the Committee refers to Parliament the appropriateness of regulations being used to prescribe further work that such individuals will be prohibited from undertaking.**

30. Clause 38 provides that the regulations may create offences punishable by penalties not exceeding 100 penalty units.

**The Committee considers the creation of an offence to be more appropriately undertaken by the legislature. The Committee refers to Parliament the appropriateness of a clause providing that the regulations may create offences punishable by penalties not exceeding 100 penalty units.**

## 5. Education Amendment (Record of School Achievement) Bill 2012

Date introduced	16 February 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Adrian Piccoli MP
Portfolio	Education

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Education Act 1990* to provide for a new school credential for those students who leave school prior to their Higher School Certificate by replacing the School Certificate with a Record of School Achievement.
2. The examinations or other assessments for the new credential will be conducted on a school-basis, but will be moderated on a State-wide basis.
3. The Bill will also provide for a more extensive record of student results and other activities during Years 10, 11 and 12.

### BACKGROUND

4. In recent years, a number of key stakeholders have expressed the view that the School Certificate, first awarded in 1965, was no longer valued by the majority of students or teachers. Following a review conducted by the Board of Studies, the Minister for Education announced that the School Certificate would be abolished.
5. The Board of Studies was subsequently commissioned with the task of developing a new credential that took into account the increase in school leaving age to 17, the Commonwealth Government's National Assessment Program Literacy and Numeracy (NAPLAN) testing up to year nine, the introduction of a nationwide curriculum and developments in technology.
6. Following consultation with key stakeholder groups, including principals, teachers, students, parents and community members, a new credential – the Record of School Achievement – was developed. This Bill gives effect to the new credential.

### OUTLINE OF PROVISIONS

7. **Clause 1** sets out the name (also called the short title) of the proposed Act.
8. **Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.
9. **Schedule 1 [14]** substitutes section 94 of the Act to make provision for the grant of a Record of School Achievement instead of the School Certificate. The substituted section continues the requirements that the student has completed Year 10 and has, to the satisfaction of the Board of Studies:

- (a) participated in the requisite courses of study, and
- (b) undertaken the requisite examinations and other assessments.

However, examinations and other assessments in relation to the grant of the Record of School Achievement will not be conducted on a State-wide basis but will be school-based and moderated on a State-wide basis.

10. **Schedule 1 [18]** substitutes section 98 of the Act, which currently makes provision for the issue of a record of achievement to students in Years 10, 11 and 12. The substituted section will require a more extensive record of student results and other student activities while at school to be kept and provided by the Board of Studies.

Students who complete Year 10 or undertake courses in Year 11 or Year 12 will be entitled to be provided with the relevant transcript of study, whether or not they are granted a Record of School Achievement or a Higher School Certificate.

11. **Schedule 1 [1]–[9], [11]–[13] and [15]–[17]** replace references to the School Certificate with references to the proposed Record of School Achievement. The amendments:

- (a) retain the requirement for a designated curriculum for students who are candidates for the Record of School Achievement, and
- (b) retain the requirement that non-government schools with students who are candidates for the Record of School Achievement must be specially accredited for that purpose.

12. **Schedule 1 [10]** removes a transitional provision that is spent.

13. **Schedule 1 [19] and [20]** make, and authorise the making of, provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

14. **Schedule 2** makes consequential amendments to the regulation under the Act.

## ISSUES CONSIDERED BY THE COMMITTEE

**The Committee makes no comment on the Bill in respect of the issues set out in s 8A(1) of the *Legislation Review Act 1987*.**

## 6. Firearms Amendment (Ammunition Control) Bill 2012

Date introduced	15 February 2012
House introduced	Legislative Council
Minister responsible	The Hon Michael Gallacher MLC
Portfolio	Police and Emergency Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Firearms Act 1996* as follows:
  - (a) to prevent the sale of ammunition by a licensed firearms dealer to a shooter unless the purchaser is the registered owner of, or has a permit to acquire, a firearm that takes the ammunition (in addition to the existing requirement that the purchaser must hold a licence or permit for a firearm that takes the ammunition); and
  - (b) to require licensed firearms dealers to keep records of purchases and sales of ammunition.

### BACKGROUND

2. The Second Reading speech states that this Bill amends the *Firearms Act 1996*, 'to implement a series of reforms to further strengthen the regulation of the sale and transfer of firearms ammunition in New South Wales.' The measures are aimed at preventing ammunition from coming into the possession of criminals that may use it for illegal activities such as robberies and drive by shootings.
3. The provisions of the Bill are not meant to disadvantage appropriately licensed individuals such as members of a shooting club.

### 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 Firearms Act 1996 No 46

6. **Restrictions on sales of ammunition**
7. Schedule 1 [3] imposes additional requirements on a sale of ammunition by a licensed firearms dealer to a purchaser who holds a licence or permit for a firearm that takes the ammunition. The purchaser will now also be required to be the registered owner of, or hold a permit to acquire, a firearm that takes the ammunition.

8. The firearms dealer will be required to sight the purchaser's notice of registration or permit to acquire at the time ammunition is purchased. There are exceptions for sales of ammunition between licensed firearms dealers and sales by club armourers to club members for use in club firearms. Schedule 1 [2] makes a consequential amendment.

**9. Records of ammunition transactions**

10. Schedule 1 [1] requires a licensed firearms dealer to keep records of ammunition sales and purchases by the dealer. The new requirement parallels existing requirements for the keeping of records of transactions involving firearms and firearm parts.

**11. Savings and transitional**

12. Schedule 1 [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**ISSUES CONSIDERED BY COMMITTEE**

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

*Right to privacy*

13. Clause 1 of the Bill amends the *Firearms Act 1996* to insert provisions requiring the recording of personal details for each sale of ammunition. Such details include the buyer's name, address, firearms registration details and such other particulars prescribed by the regulations.

14. The introduction of legal requirements to provide personal details when purchasing goods may trespass on a person's right to privacy. However, in certain cases the public interest may override the right to privacy. For example, where the recording of such details may assist police in investigating criminal behaviour that endangers the public.

15. The Committee notes that similar provisions requiring the recording of personal details are contained in the *Firearms Act 1966* in relation to the sale of firearms.<sup>1</sup>

**The Committee notes that introducing legal requirements to provide personal details when purchasing goods may trespass on a person's right to privacy. However, the Committee is of the view that in these circumstances the public interest in providing assistance to police to investigate criminal behaviour overrides this interest.**

*Seizure without a warrant*

16. Clause 1 of the Bill inserts into the *Firearms Act 1996* provisions which empower a police officer to obtain records without documentation to show reasonable cause for the acquisition of such records. Such a provision may trespass against personal rights and liberties. The Committee is of the view however that these provisions are designed to assist police in investigating and preventing criminal behaviour that endangers the public.

**Empowering police officers to obtain records without the need to show reasonable cause may in some circumstances trespass against personal rights**

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<sup>1</sup> *Firearms Act 1996* s 45

**and liberties. However, the Committee considers that the provisions in the Bill are designed to assist police in investigating and preventing criminal behaviour which endangers the public and as such the Committee makes no further comment in relation to these provisions.**

*Strict liability*

17. The Bill inserts two strict liability offences into the *Firearms Act 1996*. One provision requires that any alterations to entries in a record of ammunition sales must be done by interlineations or by striking out, and not be erasure. To do so by other means will result in a maximum penalty of 20 penalty units.
18. A second provision provides that a firearms dealer must not sell ammunition for any firearm to a purchaser who is a holder of a licence or permit for the firearm unless a firearm that takes the ammunition is registered in the name of the purchaser and the dealer has seen the current registration issues for the firearm. Non compliance with this provision attracts a maximum penalty of 50 penalty units.
19. Imposing strict liability is often seen as contrary to the right to be presumed innocent until proven guilty. However, the imposition of strict liability will not always trespass on personal rights and liberties. The Committee considers that the above two offences are designed to support public safety and assist police in investigating criminal behaviour.

**The Committee notes the strict liability offences contained in the Bill however considers that the offences are designed to assist police in investigating criminal behaviour and support public safety. As such the Committee makes no further comment in relation to these provisions.**

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

*Commencement by proclamation*

20. The Bill provides for this Act to commence on a day or days to be appointed by proclamation. In the Second Reading speech the Minister commented that this is to allow time for the NSW Police Force to develop and agree on appropriate forms of record keeping and advise dealers in advance of the new requirements under the Act.

**The Committee will always note where commencement of an Act is delegated to the Executive, once passed by the Legislature. However, the Committee notes that commencing the Act by proclamation will allow time for appropriate procedures to be developed to support the objectives of the Act. The Committee also notes that commencement by proclamation will allow time to advise those affected of the new requirements under the Act. Accordingly, in these circumstances, the Committee does not consider there to be an inappropriate delegation of legislative powers.**

## 7. Mining Legislation Amendment (Uranium Exploration) Bill 2012

Date introduced	16 February 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 remove the general prohibition on prospecting for uranium in New South Wales;
  - (b) to enable exploration licences and associated permits (but no other licences or authorities) to be granted under the *Mining Act 1992* to prospect for uranium;
  - (c) to apply to uranium prospecting the State environmental planning policy applicable to other mineral exploration;
  - (d) to vest all uranium in New South Wales in the Crown and to exclude compensation for that vesting; and
  - (e) to make other consequential amendments.

### BACKGROUND

2. Following a change in policy, the Commonwealth has written to the New South Wales Government requesting a review on the current prohibition in New South Wales on uranium exploration and mining.
3. The present ban in New South Wales reflects the anti-nuclear sentiment of the 1980s. Along with other jurisdiction, New South Wales is seeking to respond global warming challenges and review available sources of carbon-free energy. The Premier said:

"It is time for NSW to look at every opportunity to join the mining boom which is delivering enormous profits and jobs to Western Australia, Queensland and South Australia... The first step is to establish the size, quality and location of any potential uranium deposits in New South Wales.... We are not about to rush into mining uranium until we have carried out the necessary environmental and exploration checks and have had a mature and sensible discussion about utilising this resource".<sup>2</sup>

### 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.

<sup>2</sup> Barry O'Farrell, *NSW to repeal ban on uranium exploration*, Media Release, 15 February 2012

### **Schedule 1 Amendment of Mining Act 1992 No 29**

6. Schedule 1 [1] prohibits an authorisation from being granted under the *Mining Act 1992* in respect of uranium, other than an exploration licence or an environmental assessment permit relating to an exploration licence. Section 5 of that Act makes it an offence to prospect for minerals without an authorisation.
7. Schedule 1 [2] makes uranium in the State the property of the Crown and deems that to have always been the case. No compensation will be payable for uranium that was at any time vested in a person other than the Crown or for any rights or interests of a person other than the Crown that are affected by the vesting. All Crown grants and leases and every licence or any other kind of tenure relating to Crown lands will also be taken to contain a reservation to the Crown of uranium.
8. Schedule 1 [3] enables regulations containing savings or transitional provisions to be made as a consequence of the proposed Act.
9. Schedule 1 [4] amends the definition of *mineral* to remove the exclusion of uranium as a mineral that may be covered by the *Mining Act 1992*.
10. Schedule 1 [5] inserts a definition of *uranium*, to include uranium minerals and uranium ores.

### **Schedule 2 Amendment of Mining Regulation 2010**

11. Schedule 2 [1] prescribes uranium as a mineral for the purposes of the *Mining Act 1992*. The effect of this is that the Act's requirements for prospectors to hold an authorisation will apply to persons mining or prospecting for uranium. The amendment made by Schedule 1 [1] prevents an authorisation other than an exploration licence (or an associated environmental assessment permit) from being issued, with the result that other authorisations including mining leases cannot be issued.
12. Schedule 2 [3] prescribes the group of minerals for uranium for the purposes of the issue of exploration licences. Thorium will also be included in the new group and
13. Schedule 2 [2] removes it from its current group.
14. Schedule 2 [4] prescribes the fees for applications for exploration licences for uranium.
15. Schedule 2 [5] provides for thorium to be treated as remaining in its current group of minerals for the purposes of current applications for exploration licences and existing licences and renewals of existing licences.

### **Schedule 3 Amendment of Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194**

16. Schedule 3 [1] removes a reference to prohibiting prospecting for uranium from the objects of the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*.
17. Schedule 3 [2] omits the definition of *prospect*.
18. Schedule 3 [3] removes the prohibition on prospecting for uranium.



19. Schedule 3 [4] amends a provision that would otherwise render inoperative an authority under the *Mining Act 1992* authorising prospecting for uranium.

#### Schedule 4 Amendment of Radiation Control Act 1990 No 13

20. Schedule 4 makes it clear that all activities relating to radioactive ores (including prospecting for uranium) that are regulated by the *Mine Health and Safety Act 2004* are exempted from the licensing regime established by the *Radiation Control Act 1990*.

#### Schedule 5 Amendment of Aboriginal Land Rights Act 1983 No 42

21. Schedule 5 [1] defines uranium to include uranium minerals and uranium ores by adopting the definition of *uranium* to be inserted into the *Mining Act 1992* by the proposed Act.
22. Schedule 5 [2] and [3] exclude uranium from provisions of the *Aboriginal Land Rights Act 1983* which would otherwise vest the uranium on lands vested in an Aboriginal Land Council in the Council or make certain mining operations subject to the consent of the Council. The exclusions are the same as those that apply in respect of coal and petroleum (which are also vested in the Crown).

#### Schedule 6 Amendment of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

23. Schedule 6 amends the Policy so as to cause it to apply to uranium in the same way as it applies to other minerals. The effect of this is that development for the purposes of exploration for uranium will not require development consent under the *Environmental Planning and Assessment Act 1979* but will instead be subject to the environmental assessment processes set out in Part 5 of that Act.

### ISSUES CONSIDERED BY COMMITTEE

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

24. The Bill seeks to amend the *Mining Regulation 2010* by omitting thorium from a group of minerals in the Schedule and inserting in another group, which is regulated in a different manner. This may affect any application for the granting or renewal of an exploration licence that is not determined before the commencement of the amendment. However, the Bill also amends the Regulation to enable thorium to be considered in its original group for the purpose of determining a current application.

**It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative. The Committee notes in these circumstances that any impact on rights as a result of this retrospective amendment is ameliorated by the amendment which permits a determination of an application under the previous regime.**

25. The Bill seeks to amend the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*. The insertion of a new section 7(2) has the effect of restricting those with an authority, mineral claim or opal prospecting licence from mining uranium "whether granted before or after the commencement of this section".

**It is generally the Committee's view that provisions in Bills be drafted to ensure its application from the date the Bill becomes operative. The Committee notes**

**that the insertion of the new section 7(2) merely removes a previous prohibition in relation to prospecting. The retrospective effect of the new section 7(2) maintains the law as it was in relation to mining uranium. As no individuals are affected by the retrospective drafting of the new section 7(2), the Committee makes no comment.**

26. Schedule 5 of the Bill seeks to amend the *Aboriginal Land Right Act* to include uranium with the existing minerals of coal and petroleum as minerals owned by the Crown and not subject to ownership by Aboriginal peoples.

**The Committee notes that this may be construed as racial discrimination. However, whilst Schedule 5 of the Bill may confirm the Crown's ownership of uranium in land that would be otherwise subject to the *Aboriginal Land Rights Act 1983*, Schedule 1 of the Bill has the same effect on all land in New South Wales. As the amendment to the *Aboriginal Land Rights Act* has the effect of confirming the effect on all land in New South Wales, the Committee does not consider that the Bill has an effect on the right to freedom from racial discrimination.**

*Inalienable right to develop research, production and use of nuclear energy for peaceful purposes*

27. Schedule 3 of the Bill seeks to amend the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*. Article IV of the *Treaty on the Non-Proliferation of Nuclear Weapons* outlines that nothing in the Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty (which relate to no transfer of nuclear weapons or explosive devices).

**The Committee notes that provisions in this Bill appear to be consistent with the right under the *Treaty on the Non-Proliferation of Nuclear Weapons* to develop research, production and use of nuclear energy for peaceful purposes.**

## 8. Real Property Amendment (Public Lands) Bill 2012

Date introduced	15 February 2012
House introduced	Legislative Council
Minister responsible	The Hon Greg Pearce MLC
Portfolio	Finance and Services

### PURPOSE AND DESCRIPTION

1. The object of this Bill is to enable Crown land that is reserved under the *National Parks and Wildlife Act 1974* or dedicated under the *Forestry Act 1916* to be brought under the provisions of the *Real Property Act 1900* (the Principal Act) (that is, converted to Torrens title). This is part of a wider project to convert all old system and Crown title land to Torrens title.
2. Part 3 of the Principal Act allows Crown land that is capable of being disposed of or dealt with under specified Acts to be brought under the provisions of the Principal Act. The conversion of such Crown land to Torrens title will not affect its status as Crown land or the reservations, dedications and other restrictions to which it is subject.

### BACKGROUND

3. The Torrens Title system was introduced into New South Wales with the commencement of the *Real Property Act* in 1863. Since that time all granted land has been subject to the Torrens system.
4. Prior to the introduction of the *Real Property Act*, land was subject to the inherited English common law title system (now referred to as Old System Title) or subject to a Crown grant. Lands dedicated as reserved crown land under the *National Parks and Wildlife Act 1974* or dedicated under the *Forestry Act 1916*, is subject to such a system.
5. The New South Wales Government is currently undertaking the process of converting any remaining Old System Titles to the Torrens Title system in order to simplify the system and increase efficiency.

### OUTLINE OF PROVISIONS

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

### ISSUES CONSIDERED BY COMMITTEE

**The Committee makes no comment on the Bill in respect of issues set out in s81A(1) of the *Legislation Review Act 1987*.**

## Part Two – Regulations

### 1. Proposed Postponement of the Repeal of the Apiaries Regulation 2005

#### BACKGROUND

1. By correspondence received 15 February 2012, the Minister for Primary Industries advised the Committee of the intention to postpone the repeal of the above regulation.

#### COMMENT

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The Minister advised that the postponement was sought due to proposed amendments to the *Apiaries Act 1985*.
4. The amendment proposals to the Act may require amendments to the regulation and it is proposed to remake the regulation after the Act has been amended.

#### CONCLUSION

**That the Committee writes to the Minister for Primary Industries to advise that it does not have any concerns with the postponement of the repeal of the regulation.**

## 2. Proposed Postponement of the Repeal of the Local Government (General) Regulation 2005

### BACKGROUND

1. By correspondence received 19 December 2011, the Minister for Local Government advised the Committee of the intention to postpone the repeal of the above regulation.

### COMMENT

2. The postponement of the repeal of the above regulation is proposed for the third time.
3. The Minister advised that the postponement was sought due to a comprehensive review of the Local Government Act 1993 this year. The review of the Act is expected to be completed in 2014.
4. The review of the Act will lead to a review of the above regulation. It is anticipated that a number of consequential changes will be required to the regulation.

### CONCLUSION

**That the Committee writes to the Minister for Local Government to advise that it does not have any concerns with the postponement of the repeal of the regulation.**

# Appendix One – Index of Ministerial Correspondence on Bills

The Committee currently has no Ministerial correspondence in respect of Bills.

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

The Committee currently has no correspondence in respect of Regulations on which it has reported.