



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. CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT (R 18+ COMPUTER GAMES) BILL 2012

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

2. GAME AND FERAL ANIMAL CONTROL FURTHER AMENDMENT BILL 2012*

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

Delegation of power

The Committee notes that the effect of extending the licensing powers of the Game Council NSW and providing it with the ability to set quotas may constitute an inappropriate delegation of legislative powers in so far as the Game Council NSW is a body set up to represent the interests of licensed game hunters in matters arising under the Act. However, as the Council is subject to control by the Executive with respect of the matters outlined in this bill (s 7(4) of the *Game and Feral Animal Control Act 2002*) the Committee makes no further comment.

3. HUMAN TISSUE LEGISLATION AMENDMENT BILL 2012

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

Oral variation of written wishes

The Committee notes that a possible consequence arising from the operation of clauses 1 and 2 of Bill could be that an oral statement supersedes a written objection where a person has orally indicated that they no longer object to the removal of their tissue after death, and/or no longer objects to the conduct of an anatomical examination.

However, given the public policy imperatives, and given the designated officer is not bound by the later oral indication – but may merely take it into account when making their decision – the Committee makes no further comment in relation to this issue.

The Committee will always comment on clauses that operate retrospectively. However, in circumstances where such retrospectivity seeks to promote the wishes of an individual, the Committee does not consider this to be an undue trespass on personal rights and liberties and as such makes no further comment in relation to this issue.

4. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL 2012

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

Denial of Compensation

Although this provision provides for the denial of compensation where livestock has been unilaterally seized and disposed, the Committee notes the overarching public interest to prevent and stop animal distress. In such circumstances, the Committee does not consider this provision to trespass unduly on personal rights and liberties.

Financial Burden

The Committee notes that this provision does not distinguish between farmers who wilfully or negligently fail to provide for their animals, and those farmers whose livestock have been affected by drought or other adverse weather conditions, with some farmers having little or no control over the effect such weather conditions may have on their livestock. In the latter circumstance, the recovery of expenses against the farmer could be an additional and unfair financial burden.

However, the Committee again recognises the overarching interest of this Bill to prevent and stop animal distress. The Committee also notes that the ability to seize and dispose of animals can only occur following an official warning to an owner of livestock to take remedial action to prevent further distress. As such, the Committee does not consider this provision to be a trespass on personal and liberties, and makes no further comment.

5. TRANSPORT ADMINISTRATION AMENDMENT (COMMUNITY ROAD SAFETY FUND) BILL 2012

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

Matters in regulation which may be more appropriately included in legislation

The Committee will always seek to comment in circumstances where legislation provides for functions of Government Departments to be established in regulations. However, on this occasion the legislation indicates that the functions to be established in the regulations are to relate to road safety. The Committee is satisfied that the inclusion of this reference in the legislation provides sufficient direction, and as such makes no further comment in relation to this issue.

PART TWO – REGULATIONS

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

Part One – Bills

1. Classification (Publications, Films and Computer Games) Enforcement Amendment (R 18+ Computer Games) Bill 2012

Date introduced	5 September 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 *Classification (Publications, Films and Computer Games) Enforcement Act 1995* to give effect to a decision by all Australian jurisdictions to introduce an R 18+ classification for computer games. Procedures for the classification of computer games are set out in the relevant Commonwealth Act, which is being amended to include an R 18+ category, and procedures for the enforcement of those classifications are set out in State and Territory laws. This Bill amends the New South Wales Act as follows:
 - (a) by prohibiting the sale or delivery of computer games classified R 18+ to a minor (that is, to a person who is under 18 years), except by a parent or guardian of the minor,
 - (b) by prohibiting the public demonstration of computer games classified R 18+ if a minor is present during any part of the demonstration,
 - (c) by prohibiting the private demonstration of computer games classified R 18+ in the presence of a minor, except by a parent or guardian of the minor,
 - (d) by requiring computer games classified R 18+ to display determined markings and consumer advice, indicating the classification of the games and what that classification means,
 - (e) by ensuring that public libraries, which are otherwise exempt from offences for restricted material held by them, do not demonstrate or lend computer games classified R 18+ to minors.

BACKGROUND

2. In Australia, computer games are classified under the National Classification Scheme, which provides uniform national classification of publications, films and computer games.
3. The Classification Board and the Review Board decide the appropriate classification of games and other such material.
4. In New South Wales, the procedures for the enforcement of classifications are set out in the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.
5. Until now, there has been no classification for computer games equivalent to the R18+ classification given to films that identifies the content as unsuitable for minors.
6. In 2011, the Commonwealth and all States and Territories governments agreed to introduce an R18+ classification for computer games and Commonwealth legislation has been amended to permit computer games to be classified R18+ from 1 January 2013. This Bill amends the current Act to accommodate the new classification for computer games.

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 1 January 2013 (the date of commencement of the Commonwealth Act that creates the R 18+ classification (that is, the Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012 of the Commonwealth)) or on the date of assent to the proposed Act, whichever is the later.
9. Clause 3 repeals an amending Act that contains uncommenced amendments. The substance of those amendments (to change categories of films from “R” to “R 18+” and from “X” to “X 18+”) is incorporated in the amendments made to the relevant provisions by Schedule 2 to the proposed Act.

Schedule 1 Amendment of Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63

10. Schedule 1 [1] and [9] make amendments of a statute law revision nature to ensure that certain provisions relating to the consequences of the reclassification of films and computer games apply to any reclassification under the Commonwealth Act (not just reclassifications under specified sections).
11. The remaining provisions of Schedule 1 make amendments consequential on the enactment of the Commonwealth Act that creates the R 18+ classification for computer games. The amendments made by Schedule 1 align the new R 18+ computer game restrictions with the existing restrictions on R 18+ films.
12. Schedule 1 [2] specifies the penalty for selling or publicly demonstrating an unclassified computer game that is subsequently classified R 18+.

13. Schedule 1 [3] makes it an offence to sell or deliver a computer game classified R 18+ to a minor unless the person who sells or delivers the game is a parent or guardian of the minor. It will also be an offence to sell or deliver an unclassified computer game that would, if classified, be classified R 18+, unless the person selling or delivering the game is a parent or guardian of the minor. It is a defence to a prosecution for either such offence to prove that:
 - (a) the minor, before being sold or delivered the computer game, produced to the defendant, or to the defendant's employee or agent, documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was an adult, or
 - (b) the defendant, or the defendant's employee or agent, believed on reasonable grounds that the minor was an adult, or
 - (c) the minor was employed by the defendant and the delivery took place in the course of that employment.
14. Schedule 1 [4] makes it an offence for a parent or guardian of a minor to permit the minor to attend the demonstration in a public place of a computer game classified RC or R 18+ or an unclassified computer game that would, if classified, be classified RC or R 18+.
15. Schedule 1 [5] makes it an offence for a minor who is 15 or older to buy a computer game classified R 18+, or to attend the demonstration of a computer game classified R 18+ in a public place, knowing that the computer game is so classified.
16. Schedule 1 [6] makes it an offence to publicly demonstrate a computer game classified R 18+ if a minor is present during any part of the demonstration. (Demonstrate a computer game is defined to include exhibit, display, screen, or make available for playing, the computer game.) It is a defence to a prosecution for such an offence to prove that:
 - (a) the minor produced to the defendant, or to the defendant's employee or agent, documentary evidence that might reasonably be accepted as applying to the minor and as showing that the minor was an adult, or
 - (b) the defendant, or the defendant's employee or agent, believed on reasonable grounds that the minor was an adult, or
 - (c) the minor was employed by the defendant and the demonstration took place in the course of that employment.
17. Schedule 1 [7] makes it an offence for a person to privately demonstrate in the presence of a minor a computer game classified R 18+, or an unclassified computer game that would, if classified, be classified R 18+, unless the person is a parent or guardian of the minor. It is a defence to a prosecution for such an offence that the defendant believed on reasonable grounds that the minor was an adult.
18. Schedule 1 [8] makes it an offence for a person to publicly demonstrate a computer game classified R 18+ unless the determined markings are exhibited before the computer game is demonstrated. (Determined markings are those determined under

the Commonwealth legislation. They indicate the classification of the computer game and the restrictions that it creates.)

19. Schedule 1 [10] omits a note that will be redundant as a result of the enactment of the proposed Act, and the fact that computer games may be classified R 18+. It will be an offence to advertise an R 18+ computer game at the time of a public demonstration or exhibition of a computer game or film that carries a classification lower than R 18+.
20. Schedule 1 [11] extends an existing provision that provides exemptions for public libraries, by providing that a public library, or any person employed in a public library, does not commit an offence in respect of restricted material (including a computer game classified R 18+) that is held in the library if certain requirements are complied with, in particular that the display or perusal of computer games classified R 18+, and access to such computer games by members of the public, must be restricted in an appropriate manner, that computer games classified R 18+ must not be demonstrated in the library in the presence of members of the public and that minors must not be permitted to borrow computer games classified R 18+.
21. Schedule 1 [12] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any other Act that amends the Classification (Publications, Films and Computer Games) Enforcement Act 1995.

Schedule 2 Amendment of Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001 No 95

22. Schedule 2 amends uncommenced amendments that create offences relating to the use of on-line services to make available or supply objectionable matter or matter that is unsuitable for minors.
23. Schedule 2 [1] extends the definition of matter unsuitable for minors to include computer games that are classified R 18+ or that would, if classified, be classified R 18+.
24. Schedule 2 [2] updates a category of film from “X” to “X 18+”.

ISSUES CONSIDERED BY COMMITTEE

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

2. Game and Feral Animal Control Further Amendment Bill 2012*

Date introduced	4 September 2012
House introduced	Legislative Council
Member responsible	The Hon Robert Brown MLC
	*Private member

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Game and Feral Animal Control Act 2002* as follows:
 - (a) to provide for the granting of a licence (referred to as a game management licence) authorising the owner or occupier of specified land to kill, or to permit a licensed hunter to kill, game animals on that land for non-commercial purposes,
 - (b) to include ducks and certain other game birds in the list of game animals that may be hunted or killed under the authority conferred by a game hunting licence or game management licence,
 - (c) to enable the Game Council to impose special restrictions and quotas in relation to the hunting or killing of native game birds that are listed as game animals,
 - (d) to provide that a game hunting licence does not authorise the hunting of native game birds on public land.
2. The Bill also amends the *National Parks and Wildlife Act 1974* to provide that certain licences under that Act are no longer to be issued in relation to the harming of game animals.

BACKGROUND

3. In the Second Reading Speech the Hon Robert Brown MLC commented that this bill seeks to address a problem in NSW faced particularly by irrigation farmers. As stated:

Currently, New South Wales farmers must apply to the National Parks and Wildlife Service for a permit under sections 120 and 121 of the National Parks and Wildlife Act 1974 and duck hunters must pass a Waterfowl Identification Test and then apply for a permit under sections 120 and 121 of the National Parks and Wildlife Act 1974 to be issued with a game hunting licence by the Game Council NSW.¹
4. This bill provides for the granting of a game management licence which will be the only licence needed to 'authorise the owner or occupier of specified land, or a licensed

¹ The Hon Robert Brown MLC, New South Wales, Legislative Council, *Parliamentary Debates (Hansard)*, 4 September 2012

hunter, to hunt on that land for non-commercial purposes ducks and other native birds that are listed as game animals.'

5. The Bill also provides the Game Council NSW with the ability to impose special restrictions and quotas regarding the hunting of native game birds.

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 27 December 2012.

Schedule 1 Amendment of Game and Feral Animal Control Act 2002

Game management licences

8. Schedule 1 [6] provides for a new type of licence (a game management licence) authorising the owner or occupier of specified land to kill, or to permit a licensed hunter to kill, game animals on that land. The same procedures that currently apply in relation to game hunting licences (including provisions disqualifying certain persons from being granted a licence) will also apply to game management licences. Schedule 1 [1] and [3] are consequential amendments and Schedule 1 [2] provides for exemptions from offences under National Parks and Wildlife legislation in so far as those offences would relate to activities authorised under a game management licence.
9. Schedule 1 [5] makes it clear that a person is not required to have a game hunting licence when carrying on activities authorised by a game management licence.

Game birds

10. Schedule 1 [9] and [10] insert ducks and certain other game birds to the list of game animals that may be hunted or killed under the authority conferred by a game hunting licence or game management licence. Schedule 1 [8] is a consequential amendment.
11. Schedule 1 [4] provides that a game hunting licence does not authorise the hunting of native game birds on public land.
12. Schedule 1 [7] imposes special requirements in relation to the hunting or killing of native game birds under the authority of a game hunting or game management licence. In particular, provision is made for the Game Council to impose, by way of licence conditions, quotas on the number of native game birds that may be hunted or killed, restrictions on when and where native game birds may be hunted and requirements relating to the tagging of birds that have been captured or killed. In the case of native waterfowl, a person will not be authorised to hunt or kill any such bird unless they have passed an official identification test.

Miscellaneous

13. Schedule 1 [11] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of National Parks and Wildlife Act 1974

14. Schedule 2 amends the *National Parks and Wildlife Act 1974* to provide that a general licence or an occupier's licence under that Act can no longer be issued to authorise the

harming of a game animal within the meaning of the *Game and Feral Animal Control Act 2002* as such animals may be hunted or killed under the authority of a game hunting licence or game management licence granted by the Game Council

ISSUES CONSIDERED BY COMMITTEE

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

Delegation of power

15. Clause 6 of the Bill extends the powers of the Game Council NSW in respect of the types of game hunting licences it is permitted to grant.
16. Clause 7 of the Bill provides the Game Council of NSW with provisions to set quotas in respect of the hunting of native game birds listed as game animals.

The Committee notes that the effect of extending the licensing powers of the Game Council NSW and providing it with the ability to set quotas may constitute an inappropriate delegation of legislative powers in so far as the Game Council NSW is a body set up to represent the interests of licensed game hunters in matters arising under the Act. However, as the Council is subject to control by the Executive with respect of the matters outlined in this bill (s 7(4) of the *Game and Feral Animal Control Act 2002*) the Committee makes no further comment.

3. Human Tissue Legislation Amendment Bill 2012

Date introduced	5 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Jillian Skinner MP
Portfolio	Health

PURPOSE AND DESCRIPTION

1. The objects of this Bill are:
 - (a) to amend the Human Tissue Act 1983 (the Human Tissue Act):
 - (i) to require that the most recent views expressed by a deceased person are considered in determining whether or not authority should be given for the removal of tissue from the person's body, and
 - (ii) to allow a person appointed by the Director-General of the Ministry of Health, who is not a medical practitioner, to retrieve cardiovascular tissue where an authority is granted under the Human Tissue Act for the removal of such tissue (except in the case of removal of a heart for the purposes of a heart transplant), and
 - (iii) to allow for the making of guidelines by the Director-General of the Ministry of Health in relation to organ donation, including guidelines relating to the recording of reasons for not proceeding with the removal of tissue from a person in cases where the person has given consent, but the family has objected, and
 - (b) to amend the *Anatomy Act 1977 (the Anatomy Act)* to require that the most recent views expressed by a deceased person are considered in determining whether or not authority should be given for the anatomical examination of that person's body.

BACKGROUND

2. The NSW Government is seeking to double the rate of organ donation in New South Wales. This Bill seeks to assist in that effort by amending some of the administrative process that, to date, may have the consideration of requests by individuals to donate their organs.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Human Tissue Act 1983 No 164

5. Schedule 1 [1] amends the Human Tissue Act to allow the authorisation of the removal of tissue from the body of a deceased person at a hospital if the person had expressed an objection to the removal of tissue, but subsequently indicated that he or she no longer objected. Presently, the removal of tissue from the body of a deceased person cannot be authorised under the Human Tissue Act if the person had, at any time, expressed an objection to such a removal (unless the person subsequently granted consent, in writing, to the removal of the tissue).
6. Schedule 1 [2] makes an equivalent amendment with respect to the removal of tissue from the body of a deceased person where the body is not at a hospital.
7. Schedule 1 [3] amends section 27 of the Human Tissue Act to provide that an authority to remove cardiovascular tissue from the body of a deceased person is sufficient authority for a person other than a medical practitioner, appointed by the Director-General, to remove the tissue. Presently, that section only authorises the removal of tissue for corneal transplantation or the transplantation of musculoskeletal tissue by such appointed persons.
8. Schedule 1 [4] limits the authority for the removal of cardiovascular tissue by a person other than a medical practitioner to cases other than those in which the whole of the heart is being removed for the purposes of a heart transplant.
9. Schedule 1 [5] gives effect to paragraph (a) (iii) of the Purpose and Description above.
10. Schedule 1 [6] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.
11. Schedule 1 [7] makes transitional arrangements in relation to objections or views expressed prior to the enactment of the proposed Act.

Schedule 2 Amendment of Anatomy Act 1977 No 126

12. Schedule 2 [1] amends the Anatomy Act to allow the authorisation of the anatomical examination of the body of a deceased person at a hospital or forensic institution if the person had expressed an objection to the anatomical examination, but subsequently indicated that he or she no longer objected. Presently, the anatomical examination of the body of a deceased person cannot be authorised under the Anatomy Act if the person had, at any time, expressed an objection to such an examination (unless the person subsequently granted consent, in writing, to the anatomical examination).
13. Schedule 2 [2] makes an equivalent amendment with respect to the anatomical examination of the body of a deceased person where the deceased person is not at a hospital or forensic institution.
14. Schedule 2 [3] makes transitional arrangements in relation to objections or views expressed prior to the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Oral variation of written wishes

15. Clauses 1 and 2 of Schedule 1 of the Bill, and clauses 1 and 2 of Schedule 2 of the Bill provide that a person's expressed objection to the removal of tissue - or the conduct of an anatomical examination – can be ameliorated by a later expression that the person no longer held such an objection.
16. The Committee notes that the *Human Tissue Act 1983* requires that, in circumstances of tissue removal or anatomical examinations, a designated officer for a hospital is to be satisfied, after making such inquiries as are reasonable in the circumstances, that there an individual has consented, and that consent has not been revoked. The Committee also notes that the Act does not provide any guidance in relation to what threshold should be met in relation to the designated officer satisfying himself or herself, nor what reasonable inquiries might require.

The Committee notes that a possible consequence arising from the operation of clauses 1 and 2 of Bill could be that an oral statement supersedes a written objection where a person has orally indicated that they no longer object to the removal of their tissue after death, and/or no longer objects to the conduct of an anatomical examination.

However, given the public policy imperatives, and given the designated officer is not bound by the later oral indication – but may merely take it into account when making their decision – the Committee makes no further comment in relation to this issue.

Retrospectivity

17. Clause 7 of Schedule 1 of the Bill outlines that any expressions made with respect to the intention of a person to object to the removal of tissue after death will be considered, even if those expressions were made before the commencement of the those clauses.

The Committee will always comment on clauses that operate retrospectively. However, in circumstances where such retrospectivity seeks to promote the wishes of an individual, the Committee does not consider this to be an undue trespass on personal rights and liberties and as such makes no further comment in relation to this issue.

4. Prevention of Cruelty to Animals Amendment Bill 2012

Date introduced	5 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Katrina Hodgkinson MP
Portfolio	Primary Industries

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979* to enable the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services to authorise, or delegate the ability to authorise, the seizure and disposal of distressed stock animals.
2. In determining whether to authorise the seizure and disposal of stock animals, to consider the reports of a Stock and Welfare Panel in relation to the animals' state and welfare, and implementation of the notified remedial action.
3. The Bill also provides for the recovery of costs and expenses incurred in connection with the seizure and disposal of stock animals, the exclusion of personal liability in the exercise of the proposed functions, and other miscellaneous matters.

BACKGROUND

4. The proposed amendments are designed to prevent situations developing where the condition of the stock deteriorates to such an extent that it is considered cruel to keep them alive. In doing so, the Bill creates new powers for enforcement agencies to take action in cases where livestock are suffering from exposure to the elements, debility, exhaustion or significant physical injury.

OUTLINE OF PROVISIONS

5. Clause 1 sets out the name (also called the short title) of the proposed Act.
6. Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.
7. Schedule 1 [2] inserts proposed Part 2B, which deals with the procedure by which the Director-General may deal with stock animals that the Director-General reasonably suspects are in distress due to specified types of neglect, and associated matters.
8. Proposed section 24O limits the application of proposed Part 2B to stock animals depastured on rateable land (within the meaning of the *Rural Lands Protection Act 1998*) and defines and interprets certain terms and references for the purposes of the Part.

9. Proposed section 24P enables the Director-General to issue an official warning (by way of written notice) to the owner or person in charge of a relevant stock animal, that the Director-General intends to authorise the seizure and disposal of the animal if the remedial measures specified in the notice are not taken within the specified period. The official warning may only be issued if the Director-General reasonably suspects that the animal is in distress, or is likely to become distressed, due to a lack of necessary veterinary treatment or proper and sufficient food, drink or shelter. Before issuing the official warning, the Director-General must constitute a Stock Welfare Panel and consider its report on the state of, and appropriate care for, the animal. The Panel is to monitor compliance with the official warning and, on the expiry of the period specified for compliance, provide a further report to the Director-General on the results of its monitoring, and the appropriate action to be taken in relation to the animal.
10. Proposed section 24Q enables the Director-General, by written order, to authorise an inspector to seize and dispose of the animal if, after considering the Panel's report on compliance with an official warning, the Director-General is satisfied that it has not been complied with and that the animal remains in distress or likely to become distressed. Compensation is not recoverable against any person in respect of the seizure and disposal of a stock animal in accordance with the proposed section.
11. Proposed section 24R provides for the recovery of costs and expenses incurred in connection with the seizure, keeping and disposal of a stock animal under proposed section 24Q, and the application of the proceeds of any sale of a stock animal under that section.
12. Proposed section 24S provides that a purchaser of a stock animal sold under proposed section 24Q acquires a good title to the animal.
13. Proposed section 24T provides for the constitution of Stock Welfare Panels.
14. Proposed section 24U excludes personal liability for things done or omitted to be done in good faith by the Director-General, a member of the Stock Welfare Panel or an inspector in the exercise of functions conferred or imposed under proposed Part 2B.
15. Proposed section 24V confers powers on inspectors for the purposes of proposed Part 2B.
16. Schedule 1 [1] inserts a standard definition relating to functions under the Act.
17. Schedule 1 [3] enables the Director-General to delegate the Director-General's functions under the Act to any member of staff of the Department.
18. Schedule 1 [4] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any other Act that amends the *Prevention of Cruelty to Animals Act 1979*. Part 2 Offences relating to unlicensed body art tattooing

ISSUES CONSIDERED BY COMMITTEE

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

Denial of Compensation

19. Proposed section 24Q(4) provides that when an inspector unilaterally seizes and disposes of livestock in situations where there has been livestock distress, compensation is not recoverable by the owner or person in charge of the livestock. Ordinarily, the Committee would raise concerns where Government authorised bodies compulsorily acquire property (including livestock) without due compensation. However, given the overarching public interest at preventing and stopping animal distress, the Committee not consider this provision to be unreasonable in the circumstances.

Although this provision provides for the denial of compensation where livestock has been unilaterally seized and disposed, the Committee notes the overarching public interest to prevent and stop animal distress. In such circumstances, the Committee does not consider this provision to trespass unduly on personal rights and liberties.

Financial Burden

20. Proposed section 24R(1) would enable an enforcement agency to recover costs against the owner or person in charge of distressed livestock for the expenses incurred in connection with the seizure, keep, and disposal of that livestock. However, under proposed section 24R(4), the balance (if any) of the proceeds of sale of seized livestock is to be paid to the former owner of the animal.

The Committee notes that this provision does not distinguish between farmers who wilfully or negligently fail to provide for their animals, and those farmers whose livestock have been affected by drought or other adverse weather conditions, with some farmers having little or no control over the effect such weather conditions may have on their livestock. In the latter circumstance, the recovery of expenses against the farmer could be an additional and unfair financial burden.

However, the Committee again recognises the overarching interest of this Bill to prevent and stop animal distress. The Committee also notes that the ability to seize and dispose of animals can only occur following an official warning to an owner of livestock to take remedial action to prevent further distress. As such, the Committee does not consider this provision to be a trespass on personal and liberties, and makes no further comment.

5. Transport Administration Amendment (Community Road Safety Fund) Bill 2012

Date introduced	6 September 2012
House introduced	Legislative Assembly
Minister responsible	The Hon. Gladys Berejiklian MP
Portfolio	Transport

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the Transport Administration Act 1988 to establish the Community Road Safety Fund. The purpose of the Fund is to enable revenue from fines and penalties recovered for certain camera recorded speeding and traffic light offences to be used to fund the activities carried out by Transport for NSW to promote and improve road safety.

BACKGROUND

2. There has been much public debate in relation to the appropriate use of funds raised from fines following the detection of speed through the use of speed cameras in addition to fines raised following the use of red-light cameras.
3. In the Report following its Inquiry in relation to School Zone Safety in March 2012, the Joint Standing Committee on Road Safety (Staysafe) recommended that revenue raised from school zone cameras be reinvested in specific road safety projects.
4. On 1 June 2012, the Minister for Roads outlined a seven-fold increase in mobile speed cameras and a doubling in the number of red-light speed cameras and committed all revenue raised to be spent on road safety.

OUTLINE OF PROVISIONS

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

Schedule 1 Amendment of Transport Administration Act 1988 No 109

7. Schedule 1 [1] inserts proposed Division 3B into Part 8 of the Transport Administration Act 1988. The proposed Division establishes a fund in the Special administered by Transport for NSW (TfNSW).
8. All fines and penalties recovered for speeding and traffic light offences detected by cameras, including mobile and fixed speed cameras, red light speed cameras, cameras in school zones and point to point speed cameras, and any other speeding or traffic light

offences prescribed by the regulations, will be paid into the Fund. Additional money can be paid into the Fund from the TfNSW Fund.

9. The money in the Fund will be used to meet expenditure incurred in relation to the road safety functions of TfNSW. Any money in the Fund that is not required to meet that expenditure may be paid into the Consolidated Fund.
10. For the purposes of the proposed Division, the road safety functions of TfNSW are:
 - (a) conducting testing, research and investigations in connection with promoting or improving road safety, and
 - (b) developing and implementing programs (including capital and recurrent works programs), projects, strategies and campaigns for promoting or improving road safety, and
 - (c) providing advice and assistance to public and local authorities for the promotion or improvement of road safety, and
 - (d) such other functions relating to road safety as are prescribed by the regulations.
11. Schedule 1 [2] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

ISSUES CONSIDERED BY COMMITTEE

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

Matters in regulation which may be more appropriately included in legislation

12. The proposed section 80J of the *Transport Administration Act 1988* outlines the road safety functions of Transport for New South Wales. Proposes subsection 80J(d) outlines that further functions may be prescribed by the regulations.

The Committee will always seek to comment in circumstances where legislation provides for functions of Government Departments to be established in regulations. However, on this occasion the legislation indicates that the functions to be established in the regulations are to relate to road safety. The Committee is satisfied that the inclusion of this reference in the legislation provides sufficient direction, and as such makes no further comment in relation to this issue.

Part Two – Regulations

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

Appendix One – Index of Ministerial Correspondence on Bills

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

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

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