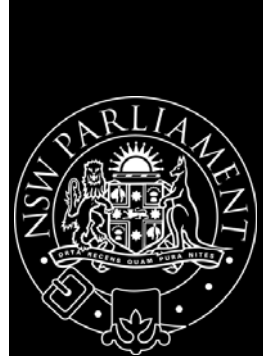


PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 7 of 2005

6 June 2005

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*** Denotes Private Member's Bill**

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FUNCTIONS OF THE LEGISLATION REVIEW 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.
- (3) 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 *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page iv).

Section B: 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.

Part Two – 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 is set out in s 9 of the *Legislation Review Act 1987* (see page iv).

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 Bills Reported on in 2005

This table lists the Bills reported on in the calendar year and the *Digests* in which any reports in relation to the Bill appear.

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

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 3: Bills that received comments under s 8A of the Legislation Review Act in 2005

This table specifies the action the Committee has taken with respect to Bills that received comment in 2005 against the five scrutiny criteria. When considering a Bill, the Committee may refer an issue that relates to its scrutiny criteria to Parliament, it may write to the Minister or Member of Parliament responsible for the Bill, or note an issue. Bills that did not raise any issues against the scrutiny criteria are not listed in this table.

Appendix 4: Index of correspondence on Regulations reported on in 2005

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.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Appropriation Bill 2005, Appropriation (Parliament) Bill 2005, Appropriation (Special Offices) Bill 2005, Fiscal Responsibility Bill 2005 and State Revenue Legislation Amendment (Budget Measures) Bill 2005

Retrospectivity: State Revenue Legislation Amendment (Budget Measures) Bill 2005, Schedule 1[14]

- | | |
|-----|---|
| 14. | The Committee is always concerned to identify where legislation is taken to have commenced on the date it was introduced into Parliament, rather than on or after the date of assent. |
| 15. | However, having regard to the purpose of clarifying the law (to prevent misuse of the concessions) and the likelihood that the period of retrospectivity will be limited, the Committee does not consider that the Bill's retrospective operation unduly trespasses on personal rights and liberties. |

2. Brigalow and Nandewar Community Conservation Area Bill 2005

- | | |
|-----|--|
| 13. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
|-----|--|

3. Building Professionals Bill 2005

Self-incrimination: proposed s 59

- | | |
|-----|---|
| 14. | The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim. Blanket removal of the right should be avoided where possible and unnecessary use of the information should be proscribed. |
| 15. | The Committee notes that the Bill limits the direct use of self-incriminating information in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings or indirectly in criminal proceedings. |
| 16. | The Committee considers that ensuring that buildings are safe and meet applicable planning controls are matters of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve that aim and proportionate to that aim. |
| 17. | The Committee has written to the Minister to seek her advice as to why there is no restriction on the use of self-incriminating information in civil proceedings. |

Power of entry into premises: proposed ss 49-56

22. Given the limitations on the entry powers and the significant public interest in ensuring that buildings are safely built and comply with all applicable laws and planning consents, the Committee does not consider that the powers of entry and inspection in the Act unduly trespass on individual rights.

4. Courts Legislation Amendment Bill 2005

4. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

5. Criminal Assets Recovery Amendment Bill 2005

Self-incrimination: proposed s 13A

46. The Committee notes that the right against self-incrimination (or “right to silence”) is a fundamental right, which should only be eroded when overwhelmingly in the public interest.
47. The Committee also considers that, as a rule, when a person is compelled to answer incriminating questions, that information should not be capable of being used against the person.
48. The Committee notes that proposed s 13A provides no limit on the use in civil proceedings of evidence provided pursuant to s 12 of the Act, and ensures that further information obtained as a result of any such evidence is not inadmissible on the grounds that the material had to be produced or might incriminate the person.
49. The Committee notes that this removes some of the existing protection of the privilege against self-incrimination in s 13 of the Act.
50. The Committee also notes that proposed s 13A(3) is at variance with similar legislation which protects the privilege against self-incrimination.
51. The Committee refers to Parliament the question of whether proposed s 13A constitutes an undue trespass on the personal right against self-incrimination.

6. Crown Lands Legislation Amendment Bill 2005

4. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

7. Environmental Planning And Assessment Amendment (Infrastructure And Other Planning Reform) Bill 2005

Self-incrimination arising from monitoring or environmental audits: proposed s 122F

32. The Committee notes that the Bill requires a proponent of a project to supply information from monitoring or environmental audits undertaken as a condition of a project approval, and allows broad use of that information, including in legal proceedings against the person, regardless of whether the information might incriminate the proponent.
33. Given that the provision of such information is a condition of approval and is necessary for effective self monitoring and audit as provided by the Bill, and that such material is in the nature of real evidence and is not testimonial in character, the Committee does not consider that proposed section 122F trespasses unduly on personal rights and liberties.

Powers of entry and search of premises: proposed ss 122J-122O

40. Given the limitations on the entry powers and the significant public interest in ensuring compliance with the Act and instruments under the Act, the Committee does not consider that the powers of entry and search in the Act unduly trespass on personal right and liberties.

Self-incrimination arising from requirements to furnish records, information or answer questions: proposed s122U

55. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim.
56. Given the importance of requiring the furnishing of records to ensure compliance with the Act and the fact that such documents are in the nature of real evidence and are not testimonial in character, the Committee does not consider that the removal of the right to self-incrimination in relation to records trespasses unduly on personal rights and liberties.
57. The Committee notes that the Bill limits the direct use of self-incriminating information and answers in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings.
58. The Committee further notes that the Bill specifically provides for the indirect use of self-incriminating records, information or answers in any proceedings.
59. The Committee considers that ensuring compliance with the Act is a matter of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve, and in proportion to, that aim.

60. The Committee refers to Parliament the question as to whether proposed section 122U unduly trespasses on a person's right not to incriminate him or herself.

Authorised officers: proposed s 122I

64. The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill.

Exclusion of merits review: proposed Part 3A

70. The Committee notes that approval of a concept plan may significantly impact on persons adversely affected by development that would normally be categorised as designated development within that plan.

71. The Committee has written to the Minister to seek his advice as to why the Bill makes no provision for an objector to appeal against the approval of a concept plan.

Exclusion of judicial review: proposed s 75T

74. The Committee notes that critical infrastructure projects will effectively be exempt from judicial review under the Act, except on application made or approved by the Minister. This exemption extends to the declaration of a project to be a critical infrastructure project.

75. The Committee notes the Minister's reassurance that "infrastructure will only be declared critical where its speedy completion is considered essential to the social, economic or environmental welfare of the State".

76. The Committee will always be concerned to identify where a bill purports to prevent judicial review of government action.

77. However, given the significant public interest in ensuring that projects essential to the social, economic or environmental welfare of the State are not unnecessarily delayed and the political accountability of the Minister in relation to any decision to declare a project to be a critical infrastructure project, the Committee does not consider that proposed section 75T makes rights, liberties or obligations unduly dependent on non-reviewable decisions.

Guidelines for environmental assessment requirements: proposed s 75F

84. The Committee notes that a vital component of the regime for approving major infrastructure and other projects in proposed Part 3A is the setting of environmental assessment requirements.

85. The Committee also notes that the regime in proposed Part 3A stands in the place of numerous statutory environmental protections and controls in regard to approved projects.

86. The Committee notes that the Bill wholly delegates the setting of environmental assessment requirements to the Minister and the Director-General and does not subject the making of guidelines for such requirements or the terms of any requirements to Parliamentary scrutiny.
87. The Committee has written to the Minister to seek his advice as to why Parliament has no role in the making or scrutinising of the guidelines with respect to environmental assessment requirements.
88. The Committee refers to Parliament the question as to whether the Bill insufficiently subjects the setting of environmental assessment requirements to parliamentary scrutiny.

8. Fire Brigades Amendment (Community Fire Units) Bill 2005

6. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

9. Gambling (Two-up) Amendment Bill 2005

5. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

10. National Park Estate (Reservations) Bill 2005

5. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

11. Occupational Health And Safety (Workplace Deaths) Bill 2005

18. The Committee did not identify any issues for consideration under s 8A(1)(b) of the *Legislation Review Act 1987*.

12. Petroleum (Submerged Lands) Amendment (Permits And Leases) Bill 2005

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

13. Poultry Meat Industry Amendment (Prevention Of National Competition Policy Penalties) Bill 2005

3. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

14. Rural Workers Accommodation Amendment Bill 2005

Principles of criminal responsibility: proposed s 22

26. The Committee notes that managers and directors of corporations voluntarily undertake the duties and liabilities of their position, including helping to prevent offences in the workplace that might cause harm.
27. The Committee also notes that, although reversing the onus of proof is inconsistent with the fundamental right of a person to be presumed innocent, this right is not absolute.
28. The Committee further notes the important policy objectives of the Bill (consistent with the *OH&S Act*) to protect workers from harm in the workplace and to encourage managers and directors of corporate employers to act with due diligence to minimise the risk of harm in the workplace.
29. The Committee refers to the Parliament the question as to whether clause 22 unduly trespasses on personal rights and liberties.

15. Surveying Amendment Bill 2005

Strict liability: proposed s 35A

8. The Committee considers that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent.
9. Given the need for persons to take care not to disclose information obtained in the administration of the Act and the limit on any monetary penalty, the Committee does not consider that the lack of an explicit element of criminal intent in proposed s 35A trespasses unduly on personal rights and liberties

16. Sydney 2009 World Masters Games Organising Committee Bill 2005

7. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

17. Sydney University Settlement Incorporation Amendment Bill 2005*

2. The Committee has not identified any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

18. Transport Legislation Amendment (Waterfall Inquiry Recommendations) Bill 2005

20. The Committee did not identify any issues under s 8A(1)(b) of the *Legislation Review Act 1987*.

SECTION B: Ministerial Correspondence — Bills Previously Considered

19. Road Transport Legislation (Speed Limiters) Amendment Bill 2004

5. The Committee thanks the Minister for his reply.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. APPROPRIATION BILL 2005, APPROPRIATION (PARLIAMENT) BILL 2005, APPROPRIATION (SPECIAL OFFICES) BILL 2005, FISCAL RESPONSIBILITY BILL 2005 AND STATE REVENUE LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2005

Date Introduced:	24 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Andrew Refshauge MP
Portfolio:	Treasurer

Purpose and Description

Appropriation Bill 2005

1. The object of this Bill is to appropriate various sums of money required for the recurrent services and capital works and services of the Government during the 2005-06 financial year. It is to commence on 1 July 2005 [proposed s 2].
2. The Bill relates to appropriations from the Consolidated Fund.¹ The Bill for the 2005-06 year contains an additional appropriation, which allocates the additional revenue raised in connection with charges to gaming machine taxes to the Minister for Health for spending on health related services.

Appropriation (Parliament) Bill 2005

3. The object of this Bill is to appropriate out of the Consolidated Fund sums for the recurrent services and capital works and services of the Parliament for the 2005-06 financial year. It is to commence on 1 July 2005 [proposed s 2].

¹ The Consolidated Fund is the principal account of the Government for General Government Budget Dependent transactions. It largely comprises receipts from, and payments out of, taxes, fines, some regulatory fees, Commonwealth grants and income from Crown assets. In addition to allocations from the Consolidated Fund, most General Government Budget Dependent agencies have other sources of moneys available to them, including from user charges, industry contributions, etc. These are not appropriated by Parliament as they are not in the nature of taxes or other mandatory levies for which a service is not provided in return for payment: *Explanatory Note to the Bill*, p 1.

Appropriation Bill 2005, Appropriation (Parliament) Bill 2005, Appropriation (Special Offices) Bill 2005, Fiscal Responsibility Bill 2005 and State Revenue Legislation Amendment (Budget Measures) Bill 2005

Appropriation (Special Offices) Bill 2005

4. The object of this Bill is to appropriate out of the Consolidated Fund sums for the recurrent services and capital works and services for 2005-2006 of the following offices: the Independent Commission Against Corruption; the Ombudsman's Office; the State Electoral Office, and the Office of the Director of Public Prosecutions. It is to commence on 1 July 2005 [proposed s 2].

Fiscal Responsibility Bill 2005

5. The object of the Bill is to:
- (a) set out *fiscal targets* and *fiscal principles* for NSW;
 - (b) make it a goal for the NSW Government to pursue its policy objectives in accordance with those fiscal targets and fiscal principles;
 - (c) require progress reports on those fiscal targets and fiscal principles in the annual budget papers; and
 - (d) provide for the Treasurer to report on departures from those fiscal targets and fiscal principles [proposed s 3].
6. The Bill repeals the *General Government Debt Elimination Act 1995* [proposed s 23]² and makes minor amendments to the *Public Finance and Audit Act 1983* [proposed s 24 and Schedule 1].
7. The Bill specifies that it does not create any legally enforceable obligation on any person [proposed s 21(1)]. As a corollary, no court or administrative review body may consider any question concerning compliance or non-compliance with the ensuing Act [proposed s 21(3)].³ This limitation is expressed not to apply to the provisions of Part 4 (including proposed ss 25 and 26, which respectively require a five and ten year review of the ensuing Act) and to Schedule 1 [proposed s 21(4)].
8. The Bill commences on 1 July 2005, with the exception of a consequential amendment to s 63F of the *Public Finance and Audit Act 1983* [proposed s 2]. The proposed s 63F amendment will commence on 1 July 2005 or on the commencement of Schedule 3.2 of the *Workers Compensation Amendment (Insurance Reform) Act 2003*, whichever is the later.⁴

² The *General Government Debt Elimination Act 1995* provides for fiscal targets (Part 2) and establishes seven fiscal principles (Part 3). Section 9 of this Act also requires any departure from the principles to be temporary and to be reported by the Treasurer.

³ Proposed s 21(1)-(3) of the Bill are equivalent to s 27(1)-(3) of the *General Government Debt Elimination Act 1995*.

⁴ See *Digest 6 of 2003* for the Committee's correspondence with the Minister for Commerce on the reason for commencing the *Workers Compensation Amendment (Insurance Reform) Bill 2003* by proclamation and the Minister's response.

State Revenue Legislation Amendment (Budget Measures) Bill 2005

9. The object of the Bill is to:
- (a) amend the *Duties Act 1997* [Schedule 1] so as to:
 - impose a limit, effective 1 August 2005, on the mortgage duty concession that currently applies when a mortgage is entered into for refinancing purposes, with the mortgage duty not to be payable on the first \$1,000,000 of the amount secured by the earlier mortgage, but to be payable at the rate of \$4 per \$1,000 above that maximum [Schedule 1[1]-[8]]; and
 - increase the duty payable from five per cent to nine per cent on general insurance policies, effective from 1 September 2005 [Schedule 1[9]-[12], [14]]; and
 - prevent the misuse of a concession that applies to vendor duty and duty on the disposal of interests in land-rich entities [Schedule 1[1]-[3]]⁵, with the amendments to take effect as if they had commenced on the date on which the Bill was introduced [Schedule 1[14]]; and
 - (b) amend the *Land Tax Act 1956* [Schedule 2] to:
 - re-introduce a tax-free threshold (\$330,000 for the 2006 land tax year and indexed thereafter); and
 - provide for a new rate of land tax on land that has a value that exceeds that tax-free threshold (\$100 plus 1.7 cents for each \$1 in excess of that threshold); and
 - (c) amend the *Land Tax Management Act 1956* [Schedule 3] to provide for the determination of the tax threshold for land tax in connection with the Schedule 2 amendments.
10. The ensuing Act is to commence on the date of assent, except that it is specified that Schedule 1[4]-[8] commence on 1 August 2005 [proposed s 2].

⁵ The *Explanatory Note to the Bill* states: 'The amendments make special provision for the application of the concession in cases where the land or interest disposed of is held subject to a trust. The object of the amendments is to **make it clear** that a mere change in the legal ownership of land-related property or an interest that is held in trust does not necessarily result in a new acquisition being made for the purpose of the concession' (p 3) (emphasis added).

Appropriation Bill 2005, Appropriation (Parliament) Bill 2005, Appropriation (Special Offices) Bill 2005, Fiscal Responsibility Bill 2005 and State Revenue Legislation Amendment (Budget Measures) Bill 2005

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Retrospectivity: State Revenue Legislation Amendment (Budget Measures) Bill 2005, Schedule 1[14]

11. The amendments to the concessions for vendor duties and land-rich disposal duty have effect as if they had commenced on 24 May 2005, the date on which the Bill was introduced [Schedule 1[14]].
12. These amendments are expressed to clarify, rather than alter the law, relating to the availability of the concessions where the land or interest disposed of is held subject to a trust, so as to prevent the misuse of the concession.
13. The beneficial owners of land-related property or interests in land-rich entities may be adversely effected if they have attempted to take advantage of the ambiguity in the *Duties Act 1997* to obtain some concession on their duty.

- | |
|---|
| <ol style="list-style-type: none">14. The Committee is always concerned to identify where legislation is taken to have commenced on the date it was introduced into Parliament, rather than on or after the date of assent.15. However, having regard to the purpose of clarifying the law (to prevent misuse of the concessions) and the likelihood that the period of retrospectivity will be limited, the Committee does not consider that the Bill's retrospective operation unduly trespasses on personal rights and liberties. |
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The Committee makes no further comment on this Bill.

2. BRIGALOW AND NANDEWAR COMMUNITY CONSERVATION AREA BILL 2005

Date Introduced:	27 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Environment

Purpose and Description

1. The objects of this Bill are:
 - (a) to reserve forested land in the Brigalow and Nandewar area to create a Community Conservation Area that provides for permanent conservation of land, protection of areas of natural and cultural heritage significance to Aboriginal people and sustainable forestry, mining and other appropriate uses; and
 - (b) to give local communities a strong involvement in the management of that land [proposed s 3].

Background

2. In his second reading speech, the Minister stated that:

The bill will permanently protect 352,000 hectares of high conservation value forests in new reserves, including public land that will change its tenure from productive forests to reserves and former private lands that have been purchased by the Department of Environment and Conservation in recent years.

The bill introduces an entirely new land management tenure. To be known as a community conservation area, this tenure was developed specifically for this part of western New South Wales. Most importantly, the Government's new community conservation area will provide an appropriate balance—between conservation and sustainable industries that will provide jobs in the timber, gas, minerals and apiary sectors. It will also be underpinned by strong community involvement. The Government's decision follows five years of detailed scientific analysis and consultation with timber operators, conservation and Aboriginal groups, the minerals and gas industries, and local communities.⁶

The Bill

3. The Bill:
 - (a) transfers lands to the national park estate in the Brigalow and Nandewar area⁷;

⁶ The Hon R J Debus, Minister for the Environment, Legislative Assembly *Hansard*, 27 May 2005.

⁷ The ensuing Act is to have effect despite any different procedure for revocations under the *Forestry Act 1916* or for reserving, or for vesting, land under the *National Parks and Wildlife Act 1974* [proposed Schedule 9[2]].

Brigalow and Nandewar Community Conservation Area Bill 2005

- (b) establishes a ***Community Conservation Area*** in respect of certain of those transferred lands and certain State forests in the area;
 - (c) establishes a Community Conservation Council and Community Conservation Advisory Committees in respect of those lands;
 - (d) provides for the preparation of a Community Conservation Agreement, which is intended to facilitate co-ordination on land management issues that are common across the Area (such as pest control and fire management)⁸;
 - (e) amends the *Forestry Restructuring and Nature Conservation Act 1995* to enable payments to be made to the Consolidated Fund from the Environmental Trust Fund⁹ to offset payments from the Consolidated Fund for the purpose of implementing forestry restructure and assistance programs and schemes in the Brigalow, Nandewar and adjacent regions;
 - (f) amends the *Environmental Trust Act 1998* to expand the range of matters for which funds can be provided, on a State wide basis, by the Environmental Trust from the Environmental Trust Fund; and
 - (g) amends the *Waste Avoidance and Resource Recovery Act 2001* to abolish the Waste Fund established under that Act and to require the money from that fund to be transferred to the Environmental Trust Fund.
4. Most of the provisions in the ensuing Act are to commence on 1 December 2005. Amendments to other Acts that relate to the funding of the Community Conservation Council are to commence on 1 July 2005 [proposed s 2].

The Community Conservation Area

5. The Community Conservation Area is to comprise certain revoked State forests, Crown land and land vested in the Minister for the Environment for the purposes of Part 11 of the *National Parks and Wildlife Act 1974*. Four zones for different permitted activities are established within the Area:
- conservation and recreation (Zone 1);
 - conservation and Aboriginal culture (Zone 2);
 - conservation, recreation and mineral extraction (Zone 3); and
 - forestry, recreation and mineral extraction (Zone 4).

The land reserved under the *National Parks and Wildlife Act 1974* relating to Zones 1 to 3 is set out, respectively, in Schedules 1 to 3 of the Bill. The land dedicated as State Forest relating to Zone 4 is set out in Schedule 4.

6. Any land:
- (a) that falls within any zone of the Community Conservation Area cannot be proposed for identification or declared as a wilderness area [proposed s 18]; and

⁸ The Hon R J Debus, Minister for the Environment, second reading speech, Legislative Assembly *Hansard*, 27 May 2005.

⁹ The Environmental Trust Fund is established under the *Environmental Trust Act 1998*.

- (b) in Zones 1-3 is not eligible to be listed as Schedule 14 lands under the *National Parks and Wildlife Act 1974* (lands of cultural significance to Aboriginals) [proposed s 19 and Schedule 12[4]].
7. By proclamation, the Governor may effectively **expand the Zones** by adding descriptions of land reserved under the *National Parks and Wildlife Act 1974* to Zones 1-3 in Schedules 1-3 and descriptions of State forest land to Zone 4 in Schedule 4 [proposed s 16].
 8. Statutory authority is required to **remove land from Zones** within the Community Conservation Area. A statutory revocation of a reservation over land as national park, Aboriginal area or state conservation area is required for land in Zones 1 to 3 to cease to be in that zone [proposed s 17(1)].¹⁰ Land in Zone 4 ceases to be in that zone if it ceases to be State forest.¹¹
 9. The Director-General of the Department of Environment and Conservation (Director-General) is empowered to adjust the descriptions of land in certain Schedules or parts of Schedules of the Bill for specified purposes.¹² These purposes include that the land boundary needs to be altered for effective land management or because the land adjoins a public road. As well as certain procedural safeguards and time limitations on adjustment, the Bill requires the Director-General to certify that the adjustments will not 'result in any significant reduction in the size or value of the land reserved under the *National Parks and Wildlife Act 1974* or as State forest' [proposed s 22(5)].¹³

Private interests in land to fall within the Community Conservation Area

10. The Bill revokes the dedication as State forests of lands that are to be reserved as national park, Aboriginal area or state conservation area, or vested in the Minister for the Environment for the purposes of the *National Parks and Wildlife Act 1974* [proposed s 20]. It also revokes timber reserves in Crown land that is reserved as national park, state conservation area or nature reserve [proposed s 21].
11. The second reading speech outlines agreements reached with the timber industry, the mining industry and other industries in relation to access to resources within specified zones of the Conservation Area.¹⁴ Other persons with interests in land granted under the *Forestry Act 1916* that are affected by the revocation of State forest land, such as occupational permit holders, may also be the subject of future arrangements.¹⁵

¹⁰ This provision is subject to proposed s 16(4), which provides that land (or part of land) described in Schedule 3 may be omitted by proclamation and added to Part 4 of Schedule 1, following its reservation as a national park.

¹¹ The repeal of a dedication of land as State Forest requires an Act of Parliament: *Forestry Act 1916*, s 18.

¹² Land descriptions in Parts 1-3 of Schedule 1, Part 1 of Schedule 2, Parts 1 and 2 of Schedule 3 and Schedules 4-8 (in their entirety) can be adjusted in accordance with proposed s 22.

¹³ Adjustments are also authorised in connection with easements and to provide a more detailed description of land.

¹⁴ The Hon R J Debus, Minister for the Environment, Legislative Assembly *Hansard*, 27 May 2005.

¹⁵ For instance, in relation to holders of occupation permits under the *Forestry Act 1916*, a task force is to be created to 'advise landholders of the revocation of occupational permits, identify capital works that may have taken place on the leased land, consider the effects of the loss of permits on landholders and manage transitional arrangements such as fencing and access issues in order to limit negative impacts. Permissive

Brigalow and Nandewar Community Conservation Area Bill 2005

12. Schedule 9 to the Bill contains ancillary and special provisions with respect to the land transfers under this Part. Among other things, these provisions:
- exclude private freehold and certain leasehold interests from the land reserved under the Bill [proposed Schedule 9[1]]¹⁶;
 - provide for the continued use of *access roads*¹⁷ to *private land holdings*¹⁸ situated within lands described in Schedules 1 to 3 and 6 to 8, subject to a declaration within 6 years of the commencement of the Act as to which access roads are to be reserved [proposed Schedule 9[5]];
 - preserve existing leases issued under the *Forestry Act 1916* affecting lands reserved as national parks, Aboriginal areas, state conservation areas or nature reserves and described in Schedules 1 to 3 and 6 until their expiration, unless earlier cancelled under that Act [proposed Schedule 1[4]];
 - preserves native title rights and interests in respect of a reservation or vesting of land or waters by the operation of the proposed Act [proposed Schedule 12.5].

Issues Considered by the Committee

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| <p>13. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

occupancies will also be considered': The Hon R J Debus, Minister for the Environment, second reading speech, Legislative Assembly *Hansard*, 27 May 2005.

¹⁶ The leasehold land excluded from reservation include land that a person holds under a perpetual lease, a special lease or a term lease within the meaning of the *Crown Lands (Continued Tenures) Act 1989* and land that is comprised in an incomplete purchase within the meaning of that Act.

¹⁷ *Access roads* are defined to mean (a) roads of access within the meaning of s 33A of the *Forestry Act 1916*; (b) roads, tracks, trails and other means of access used for access to private land holdings within those lands immediately before the ensuing Act's commencement; and (c) roads, tracks, trails and other means of access through those lands to State forests or private land holdings that adjoin or are in the vicinity of the lands [proposed Schedule 9 [5]].

¹⁸ *Private land holding* is defined to mean land held by an owner within the meaning of the *National Parks and Wildlife Act 1974* or as a holding within the meaning of the *Crown Lands Act 1989* [proposed Schedule 9[5]].

3. BUILDING PROFESSIONALS BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Diane Beamer MP
Portfolio:	Minister for Infrastructure & Planning (Planning Administration)

Purpose and Description

1. The Bill establishes the Building Professionals Board, provides for the accreditation of certifiers for the purposes of the *Environmental Planning and Assessment Act 1979*, provides for the regulation of accredited certifiers, the making of complaints against accredited certifiers and the investigation of certifying authorities and amends the *Environmental Planning and Assessment Act 1979* and other Acts consequentially.

Background

2. In her second reading speech, the Minister stated that:

The 2002 Campbell inquiry into the quality of buildings, conducted by a committee of this Parliament, concluded that the building regulatory system in New South Wales was complex, poorly co-ordinated, poorly understood and lacking in professional rigour. The inquiry recommended increasing the Government's role in regulating builders and other practitioners in the building industry. In 2003 the Government established the Home Building Service to deal with complaints against licensed builders and tradespeople who carry out residential building work. This Bill will establish the Building Professionals Board and, in so doing, extend the Government's building reform program to now include certifiers - the people who check the regulatory compliance of building and subdivision work.¹⁹

The Bill

3. The Bill:
 - (a) establishes the Building Professionals Board (*the Board*);
 - (b) removes provisions from the *Environmental Planning and Assessment Act 1979* that provide for certain professional associations to accredit persons as accredited certifiers for the purposes of that Act;
 - (c) provides for an accreditation scheme where the Board issues certificates of accreditation for persons as accredited certifiers for the purposes of that Act;
 - (d) transfers (with modifications) the complaints process and disciplinary scheme relating to accredited certifiers from that Act and provide for it to be administered by the Board; and
 - (e) to transfer other provisions relating to accredited certifiers from that Act.

¹⁹ The Hon Diane Beamer, Minister Assisting the Minister for Infrastructure & Planning (Planning Administration), Legislative Assembly *Hansard*, 25 May 2005.

4. The Bill also makes the following amendments to the *Environmental Planning and Assessment Act 1979*:
 - (a) to provide that construction certificates are of no effect if issued after the commencement of the building work or subdivision work to which they relate;
 - (b) to modify the provisions relating to the accreditation of building components, processes and designs; and
 - (c) to prevent a requirement to obtain a compliance certificate being placed on a development consent or complying development certificate.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Self-incrimination: proposed s 59

5. Proposed section 59 provides that a person who is required under the Act to answer a question, produce a thing or provide information is not excused from answering the question, producing that thing or providing the information on the ground that the answer to the question, the production of the thing or the provision of the information might tend to incriminate the person or make the person liable to a penalty.
6. The section also provides that:

[A]ny answer given to a question, any thing produced or any information provided by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against section 58 of this Act or section 307B or 307C of the *Crimes Act 1900*).
7. The Committee will always be concerned with legislation that removes or restricts a person's right against self-incrimination (or "right to silence"). The Committee considers that this right is a fundamental human right protecting personal freedom and human dignity. The Committee notes that Article 14(3)(g) of the International Covenant on Civil and Political Rights states that a person has the right "[n]ot to be compelled to testify against himself or to confess guilt".
8. The Committee notes that the right has been held by the High Court to apply to civil proceedings.²⁰
9. The Committee also notes that the Senate Standing Committee for the Scrutiny of Bills:

generally holds to the view that the interest of having government properly informed can more easily prevail where the loss of a person's right to silence is balanced by a prohibition against both the direct and indirect use of the forced disclosure. The

²⁰ In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J stated that:
the privilege against self-incrimination protects an accused person who is required by process of law to produce documents which tend to implicate that person in the commission of the offence charged. The privilege likewise protects a person from producing in other proceedings, including civil proceedings, documents which might tend to incriminate that person.

Committee is concerned to limit exceptions to the prohibition against such use. In principle, a forced disclosure should be available for use in criminal proceedings only when they are proceedings for giving false or misleading information in the statement which the person has been compelled to make.²¹

10. It has become relatively common for laws in New South Wales to compel persons to provide information the Government requires when that information is peculiarly within the knowledge of the person, even though to do so may incriminate him or her. Such laws are usually made in the context of issues of great public concern, such as public safety.
11. The Committee is of the view that such legislation should only be made with clear and proper justification on significant public interest grounds. Further, where possible, it should avoid providing for a blanket removal of the right but distinguish between situations in which there is a genuine and justifiable belief that public safety or some other equally serious matter of public interest is at stake and other possibly less serious matters. In the former case derogation of the right may be warranted. In the latter case, it may be possible to obtain the information from another source or in a way that does not require derogation. The Committee notes that clause 59 does not make any such distinctions but provides for a blanket removal of the fundamental right of a person to remain silent.
12. In line with the view that any derogation of the right not to incriminate oneself should be the minimum necessary to achieve an aim in the public interest and in proportion to that aim, the Committee considers that the use of information obtained in breach of the privilege should be constrained as much as practicable. Consequently, the use of such information in civil proceedings and the indirect use of such information should likewise be the minimum necessary to achieve an aim in the public interest and in proportion to that aim.
13. The Committee notes that ensuring that buildings are properly certified has implications for the protection of public safety. In addition, ensuring that buildings are safe and comply with all planning approvals, including environmental protection and general amenity of the area, is important on other public interest grounds.

14. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim. Blanket removal of the right should be avoided where possible and unnecessary use of the information should be proscribed.

15. The Committee notes that the Bill limits the direct use of self-incriminating information in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings or indirectly in criminal proceedings.

²¹ Senate Standing Committee for the Scrutiny of Bills, *The Work of the Committee during the 39th Parliament, November 1998 – October 2001*.

16. **The Committee considers that ensuring that buildings are safe and meet applicable planning controls are matters of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve that aim and proportionate to that aim.**
17. **The Committee has written to the Minister to seek her advice as to why there is no restriction on the use of self-incriminating information in civil proceedings.**

Power of entry into premises: proposed ss 49-56

18. Proposed section 49 gives an authorised officer²² the power to enter premises for the purposes of carrying out an investigation. Proposed section 50 of the Bill gives authorised officers very wide powers when inspecting premises, including:
- opening any ground and removing any flooring necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting;
 - requiring the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act or the *Environmental Planning and Assessment Act 1979*, or the regulations under either of those Acts or an environmental planning instrument;
 - taking measurements, making surveys and taking levels and, for those purposes, digging trenches, breaking up the soil and setting up any posts, stakes or marks;
 - requiring any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation;
 - taking samples or photographs, and making video and audio recordings, in connection with any inspection;
 - seizing anything that the person suspects on reasonable grounds is connected with an offence against this Act or the *Environmental Planning and Assessment Act 1979*, or the regulations under either of those Acts or secure any such thing against interference; and
 - under proposed section 51, using reasonable force for the purpose of gaining entry to any premises (other than residential premises), but only if authorised by the Board in accordance with that section.
19. The Committee considers that the power to enter private land without consent or a warrant is a trespass on the right to privacy²³. Such a power should only be given when overwhelmingly in the public interest to do so.
20. The Committee notes that, although the powers of entry in the Act are very broad, there are limitations on their exercise by authorised officers. For instance, an

²² “**Authorised officer**” is defined in section 3 of the Bill as “a member of staff of the Board who is authorised by the Board to carry out investigations under Part 3 of 4”.

²³ See, for example, Article 17 of the *International Covenant on Civil and Political Rights*.

authorised officer cannot enter residential premises without consent or a warrant. They may enter other premises only at a reasonable hour in the daytime or when business is in progress or is usually carried out in the premises. Authorised officers are under a duty to cause as little damage as possible and are required to notify the Board if they use force to enter premises. Cutting into or pulling down any work on the premises may only be ordered if the authorised officer concerned has reason to believe or suspect that anything on the premises has been done in contravention of the Bill or the *Environmental Planning and Assessment Act 1979* or the regulations. The Committee notes also that compensation for any damage caused in the course of an investigation is payable if no contravention of the Act is found.

21. The Committee is of the view that there is a strong public interest in ensuring that buildings are safely built and comply with all applicable laws and planning consents. The Committee also is of the view that on-site investigations of buildings are appropriate and necessary to determine compliance. Furthermore, although the investigation powers are very broad, the Committee notes that only officers who are specifically authorised can exercise these powers and that the checks on the exercise of those powers provide *some* protection against a trespass of the right to privacy.

- 22. Given the limitations on the entry powers and the significant public interest in ensuring that buildings are safely built and comply with all applicable laws and planning consents, the Committee does not consider that the powers of entry and inspection in the Act unduly trespass on individual rights.**

The Committee makes no further comment on this Bill.

4. COURTS LEGISLATION AMENDMENT BILL 2005

Date Introduced: 27 May 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends certain Acts with respect to courts, court procedures, judges' pensions and related matters.

Background

2. In his second reading speech, the Attorney General stated that "the Bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales." He also indicated that senior judicial officers had requested many of the amendments made in the Bill.²⁴

The Bill

3. The amendments in the Bill include amendments to:
 - (a) the *Administrative Decisions Tribunal Act 1997* to change the composition of the Retail Leases Division of the Tribunal in relation to unconscionable conduct claims so that the Division may be constituted by current, retired or acting judges of any jurisdiction;²⁵
 - (b) the *Anti-Discrimination Act 1977* to require the Administrative Decisions Tribunal, when dealing with a complaint under the Act, to have regard to any proceedings in relation to the same facts in another jurisdiction and the outcome of any such proceedings;
 - (c) the *Criminal Appeal Act 1912* to remove the requirement that a registrar and other officers of the Court of Criminal Appeal be appointed by the Governor and confirm that registrars and officers of the Supreme Court may exercise powers of registrars and officers of the Court of Criminal Appeal;
 - (d) the *Judges' Pensions Act 1953* to provide that a de facto partner of a judge has the same entitlements in respect of pensions and benefits provided by the Act as a married partner of a judge;

²⁴ The Hon Bob Debus MP, Attorney General, second reading speech, Legislative Assembly *Hansard*, 27 May 2005.

²⁵ In the second reading speech, the Attorney General stated that the present provisions allow only a member who is a retired judge of the Supreme Court or Federal Court or who has equivalent experience or qualifications to sit on the Retail Leases Division of the Tribunal. A recent interpretation of this provision in a decision by the Supreme Court meant that only one current member of the Tribunal could meet the criteria. The amendment will extend the class of members entitled to determine these cases to include any current, retired or acting judge or a deputy president. The amendment is designed to ensure that those members who had previously determined these cases can continue to do so. The amendments will also validate previous decisions made by these members: The Hon Bob Debus MP, Legislative Assembly *Hansard*, 27 May 2005.

- (e) the *Land and Environment Court Act 1979* to extend the powers of the Land and Environment Court, including allowing it to refer matters to mediation without consent of the parties and to order costs against a solicitor whose serious neglect, incompetence or misconduct delays proceedings;
- (f) the *Legal Profession Act 2004* to increase the cap on costs for legal services provided in connection with personal injury claims in which the amount recovered does not exceed \$100,000, and in circumstances where the Court refers the matter to arbitration and the matter is later the subject of a full or limited rehearing, or where the decision of the Court to refer the matter to arbitration is appealed;²⁶
- (g) the *Local Courts Act 1982* to remove the prohibition on Magistrates wearing court dress;
- (h) the *Supreme Court Act 1970* in a number of ways including allowing the Chief Justice to authorise officers of the Supreme Court, or a registrar or officer of a Local Court, to exercise functions of a deputy registrar or of a registrar.

Issues Considered by the Committee

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| <p>4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

²⁶ The amount of increase is 15% of the amount recovered or \$7,500, whichever is greater. Regulations may prescribe a percentage to replace the percentage of 15% or the amount of \$7,500.

5. CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2005

Date Introduced: 25 May 2005
House Introduced: Legislative Assembly
Minister Responsible: The Hon Carl Scully MP
Portfolio: Police

Purpose and Description

1. The Bill amends the *Criminal Assets Recovery Act 1990* (the Act) so as to:
 - include additional offences under the laws of NSW as *serious criminal offences* in relation to which assets may be confiscated;
 - include, as such serious criminal offences, offences under the law of the Commonwealth or other places outside NSW (including outside Australia), being offences of a kind that would be such serious criminal offences if committed in NSW;
 - make it clear that property that was subject to a mortgage or other charge repaid with the proceeds of crime is to be treated as property derived from crime;
 - enable property held in a false name and acquired using false identity documents or the identity documents of another person to be the subject of restraining orders and assets forfeiture orders if the interest in property is illegally acquired property;
 - extend the time within which a person must be charged before a restraining order ceases to be in force from 48 hours to 2 working days;
 - clarify the circumstances in which restraining orders and assets forfeiture orders may be obtained in relation to property outside NSW;
 - enable applications for restraining orders to be made by telephone, radio, facsimile, email or other form of communication instead of in person in certain urgent circumstances;
 - enable a proceeds assessment order to be made against a person aged 18 years or over who derives proceeds from the illegal activities of another person and who knew or ought reasonably to have known that the proceeds were so derived;
 - provide for the forfeiture of property not disclosed by a defendant in evidence or a warranty or representation given or made in proceedings for an assets forfeiture order or proceeds assessment order;
 - require hard copies of electronic documents and data to be provided in response to production orders;

- enable the NSW Crime Commission (the Crime Commission) to request a financial institution to give the Crime Commission information about financial transactions and to provide an indemnity if the information is supplied;
- provide for the recognition and enforcement of interstate instruments;
- enable arrangements to be made between the Minister and Ministers of other States for the transmittal of evidence of offences committed in other States that is seized under the Act; and
- make other minor and consequential amendments, and to provide for savings and transitional provisions consequential on the enactment of the proposed Act.

Background

2. The following background was given in the second reading speech:

The *Criminal Assets Recovery Act 1990* provides the framework for a system of civil forfeiture. Under the Act, the New South Wales Crime Commission or the Police Integrity Commission is able to set in train confiscation proceedings against any person the Supreme Court finds has been more probably than not engaged in serious criminal activity. Proceedings under the Act are separate from the criminal process, and are not dependent on a conviction being obtained...

Asset confiscation is therefore a highly effective tool because it strips away those ill-gotten gains, either in addition to or instead of a gaol sentence. With these amendments the impact on criminals and their associates will be even greater. Taking the proceeds of crime also reduces the chance of a gang re-offending by removing the tools of the criminal trade... Confiscating criminally acquired assets also sends an important message to our community. It assists in dispelling the notion that after a period of incarceration a person will be free to enjoy the proceeds of their crime. It re-enforces that crime really does not pay.²⁷

3. It was noted in the second reading speech that the Bill puts into effect the recommendations of the Report of the working party co-chaired by the Ministry for Police and the Attorney General's Department, *Review of New South Wales Asset Confiscation Legislation*.²⁸

The Bill

Additional serious criminal offences

4. Currently, where a person has engaged in *serious crime related activity* and, as a result, property has been illegally acquired, the Act provides for either:
- the property of a person to be forfeited under an ***assets forfeiture order*** (AFO) (s 22); or
 - an order to be made requiring a person to pay an amount, ie, a ***proceeds assessment order*** (PAO) (s 27).

²⁷ Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 May 2005.

²⁸ Mr G J West MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 May 2005.

Criminal Assets Recovery Amendment Bill 2005

5. “Serious crime related activity” is activity that is a *serious criminal offence* within the meaning of the Act, whether or not the person concerned has been charged with the offence, and regardless of the outcome of any proceedings (s 6).
6. The Bill extends the range of the Act, by adding to its ambit offences such as:
 - firearms offences;
 - sexual servitude offences;
 - child prostitution offences; and
 - possessing precursors for manufacture or production of prohibited drugs [proposed amended s 6].

“Serious crime derived property”

7. The Bill provides that property that is or has been subject to a mortgage, lien, charge, security or other encumbrance *wholly or partly discharged* using all or part of the proceeds of serious crime related activity, or serious crime derived property, is taken to have been acquired using serious crime derived property [proposed new s 9(2A)].

Forfeiture of fraudulently acquired property

8. Currently under the Act, property acquired using false identity documents, or the identity documents of another person (*fraudulently acquired* property), may be liable for AFOs or to be the basis of PAOs (s 9).
9. The Bill adds to this by providing that an interest in property is *fraudulently acquired property* if the interest is held in a false name and any of the following was knowingly used for the purposes of acquiring, or dealing with, that property:
 - a false instrument (including a birth certificate or other identity document) or signature,
 - a birth certificate or other identity document of another person [proposed new s 9A].

Orders

10. The Bill enables the Crime Commission to apply to the Supreme Court for a restraining order in respect of interests in property held in a false name [proposed amended s 10].
11. The Court must make such an order if the application is supported by an affidavit of an authorised officer stating that the officer suspects the property is fraudulently acquired property and the grounds for the suspicion and the Court considers, having regard to the affidavit, that there are reasonable grounds for the suspicion.
12. The Court must make an AFO if it finds it *more probable than not* that interests in property subject to an application are fraudulently acquired property that is also

illegally acquired property (ie, derived from illegal activity) [proposed amended s 22].²⁹

13. The Court may not make an order *excluding* interests in property from the operation of an AFO, unless it is proved that it is more probable than not that the interest in property is not fraudulently acquired property or is not illegally acquired property [proposed amended s 25].
14. A declaration may be made by the Court, together with an order for payment of the proceeds of sale of forfeited property, if it is proved that it is more probable than not that the interest in property is *not* fraudulently acquired property or is *not* illegally acquired property [proposed amended s 26].³⁰
15. A monitoring order – ie, an order requiring a financial institution to provide information about transactions conducted by a person with the institution - may be made on the grounds that the person concerned has acquired, or is about to acquire, fraudulently acquired property [proposed amended s 48].

Restraining orders generally

16. The Bill extends from 48 hours to 2 working days the period for which a restraining order can remain in force without there being a pending application for an AFO or PAO, an unsatisfied PAO, or other order being in force [proposed amended s 10].
17. The Bill inserts proposed s 10B into the Act, enabling restraining orders to be applied for and granted by telephone, radio, facsimile, email or other means of communication where it is necessary to do so to prevent funds held in a financial institution from being withdrawn or transferred to a place outside New South Wales.³¹

Extension of PAOs to third parties

18. A PAO must be made under the Act against a person in respect of proceeds derived from an illegal activity or illegal activities of the person, if the person is found to have engaged in a serious crime related activity involving an indictable quantity of drugs or an offence punishable by imprisonment for 5 years or more within the preceding 6 years [proposed new s 27(2A)(c)].
19. A PAO may be made against a person who is over 18 and who derived proceeds from an illegal activity or illegal activities of *another person* within the preceding 6 years if the other person is found to have engaged in a serious crime related activity involving

²⁹ A finding that fraudulently acquired property is illegally acquired property need not be based on a finding as to the commission of a particular offence but can be based on a finding that some offence or other constituting illegal activity was committed. Raising of a doubt as to whether a person engaged in an illegal activity is not of itself sufficient to avoid a finding that fraudulently acquired property is illegally acquired property: proposed amended s 22.

³⁰ The Bill extends the objects of the Act to cover the confiscation of illegally acquired property held in a false name: proposed amended s 3.

³¹ The Bill extends the serious criminal offences that may be the basis of remedies available under the Act to crimes committed outside New South Wales: proposed s 10A, s 22A and s 27.

an indictable quantity of drugs or an offence punishable by imprisonment for 5 years or more [proposed amended s 27].³²

Orders on failure to declare interests in property in proceedings

20. The Bill inserts proposed Div 2A of Pt 3 into the Act. The proposed Division enables assets forfeiture orders and proceeds assessment orders to be made if a person fails to declare an interest in property in proceedings under the Act for an AFO or PAO or examination proceedings (*forfeiture proceedings*).³³

Information about financial transactions

21. The Bill amends s 51 of the Act to:

- enable the Crime Commission to request a financial institution to give to the Crime Commission information about a transaction that might be of assistance in the enforcement of the Act or regulations under the Act; and
- extend the protection against actions, suits or proceedings given to financial institutions that volunteer information to the Crime Commission to financial institutions that give information in response to a request by the Crime Commission.

Recognition of interstate instruments

22. The Bill provides for the registration and enforcement in New South Wales of orders and other instruments made under legislation of other States and Territories or the Commonwealth that is similar to the Act.³⁴

23. The Bill extends the definition of authorised officer to cover persons authorised to act as such officers for the purposes of proposed Part 4A [Sch 1[2]].

³² The Bill amends s 28 of the Act to extend that section (which relates to assessment of proceeds of illegal activity for the purposes of a proceeds assessment order) to orders relating to a person other than the offender.

³³ The proposed Division:

- enables the Supreme Court, on the application of the Crime Commission, to make an order forfeiting to and vesting in the Crown a specified interest in property (undeclared property), if the interest is not specified in evidence or a warranty or representation given or made as to the defendant's interests in property in forfeiture proceedings. The order will extend to property that has been disposed of but not property subsequently acquired by a person for sufficient consideration in good faith or vested in a person on distribution of an estate [proposed s 31A];
- enables the Supreme Court, on the application of the Crime Commission, to make an order requiring a person to pay to the Treasurer the value of undeclared property *subsequently* acquired by a person for sufficient consideration in good faith or vested in a person on distribution of an estate [proposed s 31B]; and
- enables an interest forfeited to the Crown, or money paid, under the proposed Division to be vested in the original owner or repaid by order of the Supreme Court if the Court finds that property is not attributable to the proceeds of illegal activity and the offender did not know of the property at the time of the failure to disclose [proposed s 31C].

³⁴ The provisions reflect those contained in the Commonwealth's *Confiscation of Proceeds of Crime Act 1989*.

Self-incrimination

24. Section 13 of the Act currently provides that a person is not excused from providing information under s 12 because to do so would:
- incriminate the person or make them liable to a forfeiture or penalty;
 - breach on obligation not to disclose the information; or
 - disclose information the subject of legal professional privilege.
25. However, the Act limits the use of such material in criminal and civil proceedings (s 13(2)).
26. The Bill removes the provisions relating to self-incrimination from s 13 and replaces them with new provisions in s 13A. The new provisions differ from the existing provisions in that:
- they provide *no* limit on the use of such material in civil proceedings;
 - they ensure that further information obtained as a result of the material is not inadmissible on the grounds that the material had to be produced or might incriminate the person.
27. The Bill provides that a person may not rely on the privilege against self-incrimination if required to answer a question, or produce a document or other thing, in an examination on oath under the Act [proposed s 13A].

Other amendments

28. The Bill provides that an application may be made for an AFO before an application is made for a restraining order, as well as after a restraining order is made, but prevents the application for an AFO from being *determined* before a restraining order is granted [proposed amended s 22].
29. The Bill empowers an authorised officer to seize a document or other thing under a search warrant issued under the Act if the officer believes, on reasonable grounds, that it will afford evidence of a criminal offence under a law of another State or Territory or the Commonwealth [proposed amended s 47].

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Self-incrimination: proposed s 13A

30. Section 12 currently provides that the Supreme Court may make various ancillary orders relating to restraining orders made under the Act. These include orders for examination on oath (s 12(b1)).
31. Proposed s 13A(1) provides that:
- A person being examined under section 12 is not excused from answering any question, or from producing any document or other thing, on the ground that the

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answer or production might incriminate, or tend to incriminate, the person or make the person liable to forfeiture or penalty.

32. Proposed s 13A contains no privilege against self-incrimination in respect of civil proceedings, thereby removing the existing privilege under s 13(2).
33. However, the Bill does continue to make evidence given pursuant to s 12 *inadmissible in criminal proceedings* where:
- (a) the person objected at the time of answering the question or producing the document on the ground that the answer or document might incriminate the person; or
 - (b) the person was not advised that the person might object on the ground that the answer or document might incriminate the person.³⁵
34. Nonetheless, s 13A(2) to some extent places the accused under an *obligation* to speak in order to assert the entitlement. However, as the Supreme Court of Canada has observed:
- [i]t would be absurd to impose on the accused an obligation to speak in order to activate the right to silence.³⁶

The privilege against self-incrimination

35. The principle *nemo tenetur accusare se ipsum* (no person is bound to accuse himself or herself) is recognised as a basic human right protecting personal freedom and human dignity.³⁷
36. Article 14(3)(g) of the *International Covenant of Civil and Political Rights* (ICCPR) states that a person has the right '[n]ot to be compelled to testify against himself or to confess guilt'. Outside the criminal context, the privilege is an attribute of the wider right to a fair trial protected by Art 14(1) of the ICCPR.
37. Similarly, legislative abrogation of the right to silence in the United Kingdom was held to infringe the right to a fair trial contained in Article 6 of the *European Convention on Human Rights*.³⁸
38. The privilege provides that a person is not under a duty to answer questions or otherwise cooperate with public officials engaged in the investigation or prosecution, often called the *right to silence*. This right has been described by the High Court as:
- an entitlement to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of participants and the roles that they played.³⁹

³⁵ The Bill also provides that if a person furnishes a statement to the Public Trustee or the Commission in accordance with an order under s 12, the statement is not admissible against the person in *any* criminal proceedings except proceedings in respect of the false or misleading nature of the statement: proposed s 13(5).

³⁶ *R v Liew* [1999] 3 SCR 227 at paragraph 44.

³⁷ The historical origins and modern rationale of the privilege are explored in *EPA v Caltex* (1993) 178 CLR 447.

³⁸ *Condron v United Kingdom* [2001] 31 EHRR 1.

39. In *Pavic and Swaffield*,⁴⁰ the High Court emphasised that the right to silence was a fundamental rule of law.
40. It is clear that, when exercising powers under s 12 of the Act, the Supreme Court, Crime Commission, or Public Trustee would be acting as a “person in authority”, and that the exercise of these powers poses a threat to the privilege against self-incrimination.
41. As noted above, the effect of proposed s 13A is that any evidence given by a person in compliance with s 12 of the Act may be used against that person in any civil proceedings subsequently instituted.

Further use of information

42. The Bill provides that any further information obtained as a result of evidence obtained in an examination under s 12 is *not* inadmissible in criminal proceedings on the ground:
- (a) that the answer had to be given or the document had to be produced; or
 - (b) that the answer given or document produced might incriminate the person [proposed s 13A(3)].
43. Information obtained that would be inadmissible under proposed s 13A(2) may ultimately provide the basis for a search warrant, or questioning of third parties, during which further independent incriminating material of the person is found.
44. In this indirect way, information that was otherwise inadmissible in criminal proceedings on the ground that it violated the privilege against self-incrimination may nonetheless be used to incriminate that person at a later date.
45. This provision is at variance with similar provisions in the *Independent Commission Against Corruption Act 1988* (s 26) and the *Police Integrity Act 1996* (s 26) which specifically provide that if a statement, document or other thing tends to incriminate a person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against the relevant Act).

- 46. The Committee notes that the right against self-incrimination (or “right to silence”) is a fundamental right, which should only be eroded when overwhelmingly in the public interest.**
- 47. The Committee also considers that, as a rule, when a person is compelled to answer incriminating questions, that information should not be capable of being used against the person.**

³⁹ *R v Petty* (1991) 173 CLR 95 at 95. Nonetheless, the Court has noted that it is not a right against *incrimination*, simply against *self-incrimination*: *Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs* (1985) 156 CLR 385 at 393, per Gibbs CJ, Mason and Dawson JJ.

⁴⁰ (1998) 192 CLR 159.

- 48. The Committee notes that proposed s 13A provides no limit on the use in civil proceedings of evidence provided pursuant to s 12 of the Act, and ensures that further information obtained as a result of any such evidence is not inadmissible on the grounds that the material had to be produced or might incriminate the person.**
- 49. The Committee notes that this removes some of the existing protection of the privilege against self-incrimination in s 13 of the Act.**
- 50. The Committee also notes that proposed s 13A(3) is at variance with similar legislation which protects the privilege against self-incrimination.**
- 51. The Committee refers to Parliament the question of whether proposed s 13A constitutes an undue trespass on the personal right against self-incrimination.**

The Committee makes no further comment on this Bill.

6. CROWN LANDS LEGISLATION AMENDMENT BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Lands

Purpose and Description

1. The object of this Bill is to provide greater flexibility and accountability in relation to the management of Crown reserves under the *Crown Lands Act 1989* (the Act).

Background

2. The second reading speech stated that the Bill would have the effect of “slashing red tape; freeing up resources and providing greater flexibility in the day to day management of Crown land”.⁴¹ It also stated that:

The Crown reserve system consists of some 30,000 reserves across the State, many of which are managed by reserve trusts. The Bill proposes amendments to enable a more flexible and more accountable approach to Crown reserve management.⁴²

The Bill

3. Among other things, the Bill:
 - enables councils acting as reserve trust managers, to grant leases, licences and related easements over certain Crown reserves they manage without the need to obtain the Minister’s consent;
 - extends the Minister’s existing power:
 - (a) to enable the Minister to grant leases, permits, easements and rights-of-way over Crown reserves; and
 - (b) to impose a restriction or public positive covenant on land (eg, to protect the environment or prevent subdivision) in connection with the sale of any Crown land under the *Crown Lands (Continued Tenures) Act 1989*;
 - extends the existing provisions under the *Crown Lands (Continued Tenures) Act 1989* so that a restriction on use or covenant imposed by the Minister in connection with the sale of any Crown land will be protected in the same manner;

⁴¹ Mr Graham West, MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 May 2005.

⁴² Mr Graham West, MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 25 May 2005.

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- applies those same protections to agreements with landholders under the *National Parks and Wildlife Act 1974* and the *Nature Conservation Trust Act 2001*;
- requires the Minister to obtain the concurrence of the Minister for the Environment before approving the subdivision of certain former Crown land or before removing covenants in certain circumstances;
- enables inspectors authorised under the Bill to enter and inspect land to enter and inspect land that is subject to a Crown tenure and private land that is subject to a restriction on use or covenant, for the purpose of monitoring or reviewing the effectiveness of the restriction or covenant;
- enables the Minister, when determining or redetermining the rent of certain holdings under the Act and the *Crown Lands (Continued Tenures) Act 1989*, to have regard to any relevant recommendation made by the Independent Pricing and Regulatory Tribunal;
- provides for the redetermination and adjustment of rents for licences and enclosure permits under the Crown Lands Act; and
- enables the Minister to give rent rebates in relation to certain water-access only holdings and council holdings that are used for community purposes.

Issues Considered by the Committee

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| 4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

7. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (INFRASTRUCTURE AND OTHER PLANNING REFORM) BILL 2005

Date Introduced:	27 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Craig Knowles MP
Portfolio:	Infrastructure and Planning

Purpose and Description

1. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the Act) to reform land-use planning and the development assessment and approval system under that Act, particularly in respect of State infrastructure or other significant projects and land-use planning instruments.
2. The principal objects of the reforms are:
 - (a) to provide a separate streamlined and integrated development assessment and approval system for major infrastructure and other projects of significance to the State (and to facilitate the delivery of critical infrastructure projects);
 - (b) to facilitate a strategic approach to land-use planning and to simplify and standardise land-use planning controls under environmental planning instruments;
 - (c) to replace existing master plan and staged development arrangements with more secure arrangements for obtaining concept or staged approval for local development;
 - (d) to streamline environmental assessment requirements under Part 5 of the Act for activities and approvals of public authorities that are not infrastructure or other projects referred to in paragraph (a); and
 - (e) to enhance the enforcement powers under the Act, particularly in relation to infrastructure and other projects referred to in paragraph (a).

Background

3. In his second reading speech, the Minister stated:

The bill implements important elements of this Government's planning reform program—a program which is overhauling our planning system and cutting red tape at all levels, whilst continuing to improve the high standards of environmental assessment and community participation that have been the hallmark of planning legislation in this State for almost 30 years. The bill introduces new mechanisms which will ensure that the Government delivers quickly and efficiently on its

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infrastructure programs—projects for roads and transport, schools, hospital upgrades, and water and energy projects are obvious examples.

The bill will introduce a number of important changes. A single assessment and approval system for major development and infrastructure projects will replace approval processes currently scattered throughout several pieces of legislation. The bill will also improve the co-ordination of major strategic projects as well as ensure that the State focuses properly only on those matters which are genuinely of State or regional significance. In that sense, this bill re-establishes the duality of the Environmental Planning and Assessment Act by ensuring the appropriate level of assessment is applied to each matter considered under the Act and, in particular, by ensuring that there is proper delineation between those matters which are properly dealt with by the State and those which are properly dealt with by local government. For matters of State significance or major projects, the new single assessment process will strengthen the rigour, transparency and independence of the process of assessment, providing higher levels of up-front certainty for the proponent, the community and other stakeholders.⁴³

The Bill

Major infrastructure and other projects

4. Schedule 1 of the Bill inserts a new Part 3A that provides new procedures for major infrastructure and other projects. This replaces the procedures relating to “state significant development”.
5. Development projects are subject to Part 3A if so declared:
 - by a State environment planning policy; or
 - by order of the Minister published in the Gazette [proposed s 75B(1)].
6. Projects that may be so declared are major infrastructure or other development that:
 - in the opinion of the Minister, is of State or regional environmental planning significance; or
 - is an activity for which the proponent is also the determining authority and would otherwise require an environmental impact statement under Part 5 of the Act [proposed s 75B(2)].
7. Such projects may only be carried out on the approval of the Minister [proposed s 75D].
8. In summary, the process for such approval includes:
 - the proponent submits an application, including a description of the project and any other matter required by the Director-General [proposed s 75E];
 - the Director-General prepares environmental assessment requirements, having regard to any guidelines gazetted by the Minister, which may require the proponent to submit an environmental assessment and a statement of

⁴³ The Hon Craig Knowles MP, Minister for Infrastructure and Planning and Minister for Natural Resources, *Legislative Assembly Hansard*, 27 May 2005.

commitments for environmental management and mitigation measures on the site [proposed s 75F];

- the Minister may constitute a panel of experts or a panel of officers representing relevant public authorities to assess any aspect of a project [proposed s 75G];
 - the Director-General must make any environmental assessment accepted publicly available for at least 30 days, during which any person may make submissions [proposed s 75H];
 - the Director-General may require the proponent to submit:
 - a response to issues raised in submissions;
 - a preferred project report outlining proposed changes (which the Director-General may require be made public); and
 - any revised statement of commitments [proposed s 75H(6)];
 - the Director-General gives a report on the project to the Minister [proposed s 75I];
 - the Minister considers whether to approve the project, having regard to:
 - the Director-General's report;
 - if the proponent is a public authority—any advice provided by the responsible Minister; and
 - if the Minister has directed an inquiry be held in accordance with s 119—any findings or recommendations of the Commission of Inquiry [proposed s 75J].
9. If the Minister is of the opinion that a project is essential for the State for economic, environmental or social reasons, he or she can declare it to be a critical infrastructure project [proposed s 75C].
10. The Minister can approve a critical infrastructure project even if it would otherwise be wholly prohibited under an environmental planning instrument [proposed ss 75I(3) & 75R].
11. A proponent, or a person who made a submission objecting to the project, who is dissatisfied by the Minister's decision may appeal to the Land and Environment Court under certain circumstances. Appeals cannot be made in relation to critical infrastructure projects [proposed ss 75K & 75L].

Concept plans

12. The Minister may authorise or require a proponent to submit a concept plan for a project. A concept plan is to:
- outline the scope of the project and any development options;
 - set out any proposal for the staged implementation of the project; and

- contain any other matter required by the Director-General [proposed s 75M].
13. A similar process to that required for projects applies to concept plans in relation to environmental assessment requirements, assessment panels, public consultation and environmental assessment reports by the Director-General, subject to the regulations [proposed s 75N].
 14. The Minister may make a range of determinations regarding the project, or any stage of the project, when approving a concept plan [proposed s 75P].
 15. A proponent who is dissatisfied by the Minister's refusal to approve a concept plan may appeal to the Land and Environment Court under certain circumstances. Appeals cannot be made in relation to critical infrastructure projects [proposed s 75Q].
 16. The approval of a concept plan satisfies any requirement in an environmental planning instrument for the preparation of a development control plan [proposed s 75M(4)].

Application of other provisions

17. Subject to proposed Part 3A, Parts 3, 4 and 5 of the Act do not apply to approved projects [proposed s 75R].
18. Part 3 (Environmental planning instruments) of the Act and State Environmental Planning Policies do apply to the carrying out of projects under Part 3A, but in the case of a critical infrastructure project, only to the extent specifically provided by a State Environmental Planning Policy.
19. Division 2A of Part 6 (Orders) of the Act only applies to a critical infrastructure project to the extent the regulations so provide. The provisions of the Act relating to development and affordable housing contributions apply to projects approved under Part 3A if those provisions would have applied had the project been approved under Part 4 of the Act. Sections 81A, 116B and 116G apply to building and subdivision work carried out under an approval under Part 3A.
20. Various statutory authorisations are not required for a project approved under Part 3A,⁴⁴ and orders and notices under certain Acts cannot be made so as to prevent or interfere with the carrying out of an approved critical infrastructure project.⁴⁵ In

⁴⁴ These include:

- (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of the Act,
- (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
- (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
- (d) a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974*,
- (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation,
- (f) a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*,
- (g) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
- (h) a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

⁴⁵ These include:

- Division 8 of Part 6 of the *Heritage Act 1977*;

addition, various authorisations cannot be refused if they are necessary for carrying out an approved project and are to be substantially consistent with the projects approval [proposed s 75U].

Other provisions relating to judicial review

21. Certain proceedings referred to in proposed s 75T cannot be taken in the Land and Environment Court without the approval of the Minister in the case of critical infrastructure projects.
22. The validity of an approval or other decision under proposed Part 3A cannot be questioned in any legal proceedings if the proceedings are not commenced within 3 months after public notice of the decision was given [proposed s 75X(4)].
23. The only requirement of proposed Part 3A that is mandatory in connection with the validity of an approval of a project or of a concept plan is a requirement that an environmental assessment with respect to the project is made publicly available [proposed s 75X(5)].

Planning instruments amendments

24. Schedule 2 of the Bill provides for the standardisation of local and other environmental planning instruments. This is achieved through the Governor prescribing the standard form and content of local environment plans or other environmental planning instruments, including the prescription of mandatory and permitted provisions.
25. The Governor will also be able, by order published in the Gazette, to establish a staged repeal program for existing environmental planning instruments.

Enforcement amendments

26. Schedule 5 provides new powers to the Minister, the Director-General and authorised officers to enforce approvals under proposed Part 3A. These powers include:
 - enabling the Minister or Director-General to use the order powers of local councils for the purposes of projects under proposed Part 3A;
 - enabling the Minister to impose conditions on Part 3A approvals requiring monitoring and audits to be carried out by or on behalf of the approval holder; and

-
- an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),
 - an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,
 - an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
 - an order under section 124 of the *Local Government Act 1993*.

- enabling the Director-General to appoint persons as authorised officers to enter premises in certain circumstances, conduct inspections, take samples and photographs, examine and copy records, seize things connected with an offence under the Act, and require the answering of questions or production of documents.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Self-incrimination arising from monitoring or environmental audits: proposed s 122F

27. Under proposed s 122C, the Minister may, by the imposition of conditions on the approval for a project, require the proponent of a project to undertake monitoring or an environmental audit or audits.
28. Information from such monitoring or audits must be supplied by a person whether or not the information might incriminate the person. Such information may be taken into consideration by the Minister and used for the purposes of the Act and is admissible in evidence in any prosecution of the proponent of an approved project for any offence and may be disclosed by the Minister [proposed s 122F].
29. The Committee notes that the provision of such information is a condition entered into in order to obtain the project approval.
30. The Committee also notes that a scheme providing for self monitoring and audit would be rendered impotent if any self-incriminating information collected could not be used.
31. The Committee further notes that the provision does not require a person to testify against him or herself but only to provide information required to be collected under the conditions of approval for the project.

32. The Committee notes that the Bill requires a proponent of a project to supply information from monitoring or environmental audits undertaken as a condition of a project approval, and allows broad use of that information, including in legal proceedings against the person, regardless of whether the information might incriminate the proponent.

33. Given that the provision of such information is a condition of approval and is necessary for effective self monitoring and audit as provided by the Bill, and that such material is in the nature of real evidence and is not testimonial in character, the Committee does not consider that proposed section 122F trespasses unduly on personal rights and liberties.

Powers of entry and search of premises: proposed ss 122J-122O

34. Proposed s 122J gives an authorised officer⁴⁶ the power to enter, with the use of reasonable force:

⁴⁶ Proposed s 122I enables the Director-General to appoint any person as an authorised officer (see below).

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- (a) any premises at which the officer reasonably suspects any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
- (b) any other premises—at any reasonable time.
35. However, an authorised officer is not empowered to enter any part of premises used only for residential purposes without a search warrant [proposed s 122K].
36. Proposed s 122L allows authorised officers, at any premises lawfully entered, to do *anything that in the opinion of the authorised officer is necessary to be done* for the purposes of Part 6, Division 2C (Departmental enforcement powers). This can include, among other things:
- examining and inspecting any works, plant or other article;
 - taking samples or photographs, and making video and audio recordings;
 - requiring records to be produced for inspection and inspecting and copying any records;
 - seizing anything that the officer has reasonable grounds for believing is connected with an offence against the Act or the regulations; and
 - requiring a person to answer questions.
37. The Committee considers that the power to enter private land without consent or a warrant is a trespass on the right to privacy.⁴⁷ Such a power should only be given when overwhelmingly in the public interest to do so.
38. The Committee notes that, although the powers of entry in the Act are very broad, there are limitations on their exercise by authorised officers. For instance, an authorised officer is not empowered to enter residential premises without a warrant. They may enter other premises only at a reasonable time or when a relevant activity is being carried out. Authorised officers are under a duty to cause as little damage as possible and compensation for any damage caused entering premises is payable unless the occupier obstructed or hindered the officer.
39. The Committee is of the view that there is a strong public interest in ensuring that the Act, the regulations, any environmental planning instrument and any approval or development consent are complied with. The Committee also is of the view that on-site investigations are appropriate and necessary to determine compliance. Furthermore, although the entry powers are very broad, the Committee notes that the checks on the exercise of those powers provide *some* protection against a trespass of the right to privacy and the right to enjoy property without undue interference.

40. Given the limitations on the entry powers and the significant public interest in ensuring compliance with the Act and instruments under the Act, the Committee does not consider that the powers of entry and search in the Act unduly trespass on personal right and liberties.

⁴⁷ See, for example, Article 17 of the *International Covenant on Civil and Political Rights*.

Self-incrimination arising from requirements to furnish records, information or answer questions: proposed s122U

41. An authorised officer may, by notice in writing, require a person to furnish to the officer such information or records as the officer requires in connection with any matter within the responsibilities and functions of the Minister or Director-General under the Act [proposed s 122Q].
42. An authorised officer also may:
 - require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required in connection with any matter within the responsibilities and functions of the Minister or Director-General under this Act to answer questions in relation to those matters [proposed s 122S(1)].
43. Proposed s 122U provides that a person is not excused from a requirement under the Division to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
44. The section provides that any such information furnished or answer given by a natural person is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under the Division⁴⁸) if the person objected at the time of doing so on the ground that it might incriminate the person or if the person was not warned that the person may so object.
45. However, any record furnished by a person in compliance with a requirement under the Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
46. Also, any further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under the Division is not inadmissible on the ground that the record, information or answer had to be given or might incriminate the person.
47. The Committee will always be concerned with legislation that removes or restricts a person's right against self-incrimination (or "right to silence"). The Committee considers that this right is a fundamental human right protecting personal freedom and human dignity. The Committee notes that Article 14(3)(g) of the International Covenant on Civil and Political Rights states that a person has the right "[n]ot to be compelled to testify against himself or to confess guilt".
48. The Committee notes that the right has been held to apply to civil proceedings.⁴⁹

⁴⁸ These relate to furnishing false information or wilfully delaying or obstructing an authorised officer [proposed s 122T].

⁴⁹ In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J stated that:
the privilege against self-incrimination protects an accused person who is required by process of law to produce documents which tend to implicate that person in the commission of the offence charged. The

49. The Committee also notes that the Senate Standing Committee for the Scrutiny of Bills:
- generally holds to the view that the interest of having government properly informed can more easily prevail where the loss of a person's right to silence is balanced by a prohibition against both the direct and indirect use of the forced disclosure. The Committee is concerned to limit exceptions to the prohibition against such use. In principle, a forced disclosure should be available for use in criminal proceedings only when they are proceedings for giving false or misleading information in the statement which the person has been compelled to make. [emphasis in original]⁵⁰
50. It has become relatively common for laws in New South Wales to compel persons to provide information the Government requires when that information is peculiarly within the knowledge of the person, even though to do so may incriminate him or her. Such laws are usually made in the context of issues of great public concern, such as public safety.
51. The Committee is of the view that such legislation should only be made with clear and proper justification on significant public interest grounds. Further, where possible, it should avoid providing for a blanket removal of the right but distinguish between situations in which there is a genuine and justifiable belief that public safety or some other equally serious matter of public interest is at stake and other possibly less serious matters. In the former case derogation of the right may be warranted. In the latter case, it may be possible to obtain the information from another source or in a way that does not require derogation.
52. In line with the view that any derogation of the right not to incriminate oneself should be the minimum necessary to achieve an aim in the public interest and in proportion to that aim, the Committee considers that the use of information obtained in breach of the privilege should be constrained as much as practicable. Consequently, the use of such information in civil proceedings and the indirect use of such information should likewise be the minimum necessary to achieve an aim in the public interest and in proportion to that aim.
53. The Committee is of the view that there is a strong public interest in ensuring that the Act, the regulations, any environmental planning instrument and any approval or development consent are complied with.
54. The Committee is also of the view that a requirement to furnish records is necessary to ensure compliance with the Act. The Committee also considers that allowing the privilege against self-incrimination in regards to records required to be furnished would significantly compromise compliance enforcement. Further, the Committee

privilege likewise protects a person from producing in other proceedings, including civil proceedings, documents which might tend to incriminate that person.

In *Rich v Australian Securities and Investments Commission* [2004] HCA 42, the High Court has also held that the privilege against exposure to penalties (which bears "some similarity with the privilege against incrimination") prevented a discovery order being made requiring the production of documents.

⁵⁰ Senate Standing Committee for the Scrutiny of Bills, *The Work of the Committee during the 39th Parliament, November 1998 – October 2001*.

notes that the case for the privilege for testimonial evidence is much stronger than that for documentary evidence.⁵¹

- 55. The Committee notes that the privilege against self-incrimination is a fundamental right expressed in the International Covenant on Civil and Political Rights and the common law. The Committee considers that this right should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim.**
- 56. Given the importance of requiring the furnishing of records to ensure compliance with the Act and the fact that such documents are in the nature of real evidence and are not testimonial in character, the Committee does not consider that the removal of the right to self-incrimination in relation to records trespasses unduly on personal rights and liberties.**
- 57. The Committee notes that the Bill limits the direct use of self-incriminating information and answers in criminal proceedings but does not provide any restriction on the use of that information in civil proceedings.**
- 58. The Committee further notes that the Bill specifically provides for the indirect use of self-incriminating records, information or answers in any proceedings.**
- 59. The Committee considers that ensuring compliance with the Act is a matter of sufficient public importance to warrant the abrogation of the privilege against self-incrimination to the extent necessary to achieve, and in proportion to, that aim.**
- 60. The Committee refers to Parliament the question as to whether proposed section 122U unduly trespasses on a person's right not to incriminate him or herself.**

⁵¹ In *EPA v Caltex* (1993) 178 CLR 447, Mason CJ and Toohey J observed that:

Plainly enough the case for protecting a person from compulsion to make an admission of guilt is much stronger than the case for protecting a person from compulsion to produce books or documents which are in the nature of real evidence of guilt and are not testimonial in character.

Deane, Dawson and Gaudron JJ also observed that:

So far as documents are concerned, it may be thought that the maxim *nemo tenetur seipsum prodere* has a limited application, for documents are more in the nature of real evidence and speak for themselves in contrast to evidence of a testimonial kind. It is said, particularly in the United States, that there is a testimonial element in the production of documents because the person producing them identifies the documents produced as those being sought ((152) *Braswell v. United States* (1988) 487 US 99, at pp.111-118.). There is a certain technicality about that explanation. In reality, the privilege protects a person from being compelled to produce evidence which will incriminate him, whether testimonial or not. That is clear enough in a criminal trial where an accused cannot be compelled by the prosecution to produce documents. But the immunity enjoyed by an accused in a criminal trial extends to evidence of any kind, whether incriminating or not. The immunity is, perhaps, better explained by the principle that the prosecution bears the onus of proving its case, than by the more confined principle that an accused has a privilege against self-incrimination, notwithstanding that both have a common origin.

Insufficiently defined administrative powers [s 8A(1)(b)(ii) LRA]**Authorised officers: proposed s 122I**

61. Proposed section 122I allows the Director-General to appoint “any person” as an authorised officer for the purposes of Part 6, Division 2C regarding Departmental enforcement powers.
62. Such authorised officers have significant powers that may impact adversely on personal rights and liberties, including powers to enter and search premises, seize anything believed to be connected with an offence against the Act, and compel the provision of information.
63. The Committee has previously expressed the view that, when legislation conveys on persons administrative powers that can significantly affect personal rights, it should include appropriate limits as to who may be authorised to exercise those powers.⁵²

64. The Committee has written to the Minister to seek his advice as to why there are no requirements regarding the qualifications or attributes of persons who may be appointed as authorised officers under the Bill.

Non-reviewable decisions [s 8A(1)(b)(iii) LRA]**Exclusion of merits review: proposed Part 3A**

65. The Bill provides, in certain circumstances, for merits review by the Land and Environment Court of the Minister’s decision whether or not to approve a project application on appeal from the proponent or an objector, and of the Minister’s decision whether or not to approve a concept plan on the appeal of the proponent.
66. Merits review is not provided:
- for critical infrastructure projects;
 - for projects for which a concept plan has been approved;
 - for projects subject to an inquiry under s 119 or a report of a panel of experts;
 - on appeal from an objector, projects that, apart from the application of Part 3A, would not be designated development; and
 - on appeal from an objector, a concept plan.
67. The Committee considers that decisions which may impact on a person’s rights, liberties and obligations should normally be subject to review.
68. It nevertheless appears reasonable to the Committee to exclude such review when development decisions have already been subject to particularly rigorous consideration, such as a s 119 inquiry or panel of experts report. It also appears

⁵² *Legislation Review Digest No 4 of 2003*, 27 October 2003, at 30-31.

reasonable when rapid approval is overwhelmingly in the public interest, as with critical infrastructure projects.

69. A concept plan could include proposals for projects which otherwise could be categorised as designated development, for which appeals by objectors is normally allowed under the Act.

70. The Committee notes that approval of a concept plan may significantly impact on persons adversely affected by development that would normally be categorised as designated development within that plan.

71. The Committee has written to the Minister to seek his advice as to why the Bill makes no provision for an objector to appeal against the approval of a concept plan.

Exclusion of judicial review: proposed s 75T

72. Proposed s 75T prevents proceedings being commenced in the Land and Environment Court *in relation to critical infrastructure projects*, except on application made or approved by the Minister:

- to remedy or restrain a breach of the Act arising under Part 3A, including the declaration of the project as a critical infrastructure project;
- to enforce any conditions of an approval under Part 3A; or
- to remedy or restrain a breach of any Act arising in respect of the giving of an authorisation of a kind referred to in proposed s 75V(1).

73. In his second reading speech, the Minister said:

The bill provides there will be no appeals against decisions on critical infrastructure and there will be no third party legal challenges under any environmental and planning statutes against those decisions. The bill will ensure that that the construction and operation of approved critical infrastructure projects cannot be stopped or delayed by other Government agencies or local councils. It is important to note that infrastructure will only be declared critical where its speedy completion is considered essential to the social, economic or environmental welfare of the State. Further, once declared as critical infrastructure, these projects will be subject to appropriate environmental assessment and controls.⁵³

74. The Committee notes that critical infrastructure projects will effectively be exempt from judicial review under the Act, except on application made or approved by the Minister. This exemption extends to the declaration of a project to be a critical infrastructure project.

75. The Committee notes the Minister's reassurance that "infrastructure will only be declared critical where its speedy completion is considered essential to the social, economic or environmental welfare of the State".

⁵³ The Hon Craig Knowles MP, Minister for Infrastructure and Planning and Minister for Natural Resources, *Legislative Assembly Hansard*, 27 May 2005.

- 76. The Committee will always be concerned to identify where a bill purports to prevent judicial review of government action.**
- 77. However, given the significant public interest in ensuring that projects essential to the social, economic or environmental welfare of the State are not unnecessarily delayed and the political accountability of the Minister in relation to any decision to declare a project to be a critical infrastructure project, the Committee does not consider that proposed section 75T makes rights, liberties or obligations unduly dependent on non-reviewable decisions.**

Parliamentary scrutiny of legislative power [s 8A(1)(b)(v) *LRA*]

Guidelines for environmental assessment requirements: proposed s 75F

78. The Bill exempts approved major infrastructure and other projects from numerous statutory provisions ensuring various aspects of environmental protection and control. Instead, proposed s 75F requires the Director-General to prepare environmental assessment requirements in relation to an application for a project or concept plan. As the Minister stated in his second reading speech:

The bill ... removes the need for up to 15 different approvals and licences from nine separate pieces of legislation, replacing them with one assessment and approval process.⁵⁴

79. Any such environmental assessment is central to public comment and Ministerial consideration of the application.⁵⁵
80. The Bill provides that the Minister may, after consultation with the Minister for the Environment, publish guidelines in the Gazette with respect to environmental assessment requirements. The Minister set out how he plans for this to occur in his second reading speech:

⁵⁴ The Hon Craig Knowles MP, Minister for Infrastructure and Planning and Minister for Natural Resources, *Legislative Assembly Hansard*, 27 May 2005.

⁵⁵ In describing this assessment process, the Minister stated:

The new part 3A provides for integrated approvals that will consolidate 15 approvals under nine Acts into a single assessment process and approval given under the Environmental Planning and Assessment Act. The assessment and approvals will be actively co-ordinated by the Department of Infrastructure, Planning and Natural Resources. The provisions relating to the assessment and management of impacts on critical habitats, and threatened species, populations and ecological communities and their habitats under the Fisheries Management Act, Threatened Species Conservation Act and the National Parks and Wildlife Act will be integrated into the assessment under this new part.

In addition, the environmental protection provisions under eight different Acts will be integrated into one approval. Those provisions relate to impacts on waterways, riparian zones and coastal processes, including from the use of water, water management works, dredging and aquifer interference under the Rivers and Foreshores Improvement Act 1948, the Water Management Act 2000 and the Coastal Protection Act 1979; impacts on aquatic ecology, including from dredging, obstructions in waterways or disturbance of mangroves under the Fisheries Management Act 1994; impacts on terrestrial ecology under the Native Vegetation Act 2003 and the National Parks and Wildlife Act 1974; bushfire risks under the Rural Fires Act 1997; impacts on Aboriginal items or places under the National Parks and Wildlife Act 1974; and impacts on heritage values, including in relation to excavation under the Heritage Act 1979.

Environmental Planning And Assessment Amendment (Infrastructure And Other Planning Reform) Bill 2005

The environmental assessment will be carried out under guidelines and protocols to be developed by a new Chief Executive Officers Forum. That forum will be made up of the directors-general of the major regulatory agencies. Those guidelines and protocols will set the rules for assessment methodology, consultation requirements and performance levels, and will ensure that high environmental outcomes are achieved. The level of assessment will be tailored to the complexity and likely level of significance of the impacts of the project in question.⁵⁶

81. For each project application and concept plan, the Director-General is to prepare environmental assessment requirements having regard to any such relevant guidelines.
82. The Bill wholly delegates to the Minister, after consultation with the Minister for the Environment, the power to set guidelines for environmental assessment requirements. It then delegates to the Director-General the power to set requirements for environmental assessments under those guidelines.
83. The Bill does not give the Parliament any role in reviewing any guidelines given, nor does it provide Parliament with any power to disallow them.

84. **The Committee notes that a vital component of the regime for approving major infrastructure and other projects in proposed Part 3A is the setting of environmental assessment requirements.**
85. **The Committee also notes that the regime in proposed Part 3A stands in the place of numerous statutory environmental protections and controls in regard to approved projects.**
86. **The Committee notes that the Bill wholly delegates the setting of environmental assessment requirements to the Minister and the Director-General and does not subject the making of guidelines for such requirements or the terms of any requirements to Parliamentary scrutiny.**
87. **The Committee has written to the Minister to seek his advice as to why Parliament has no role in the making or scrutinising of the guidelines with respect to environmental assessment requirements.**
88. **The Committee refers to Parliament the question as to whether the Bill insufficiently subjects the setting of environmental assessment requirements to parliamentary scrutiny.**

The Committee makes no further comment on this Bill.

⁵⁶ The Hon Craig Knowles MP, Minister for Infrastructure and Planning and Minister for Natural Resources, *Legislative Assembly Hansard*, 27 May 2005.

8. FIRE BRIGADES AMENDMENT (COMMUNITY FIRE UNITS) BILL 2005

Date Introduced:	24 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Minister for Emergency Services

Purpose and Description

1. The object of this Bill is to amend the *Fire Brigades Act 1989* (the Act) to provide for the establishment and operation of community fire units.

Background

2. The second reading speech stated that:

Today, we have 268 CFUs [Community Fire Units] in various locations, made up of 4,700 volunteer members... By October this year the Fire Brigade anticipates that another 32 units will be established, taking the number of units around the State to 300, with a total of more than 5,000 members...

It is the view of the Government that the number of CFUs and the growing community involvement has now reached a level that warrants formal recognition of a unit's role and a legislative framework for their establishment, training and operation. The amendments to the *Fire Brigades Act 1989* proposed in...[this] bill fulfil these objectives.⁵⁷

The Bill

3. The Bill inserts into the Act a new Division which provides for:
 - (a) the establishment and disbanding of community fire units by the Commissioner of NSW Fire Brigades (Commissioner) for geographical areas within a fire district [proposed s 74B];
 - (b) the Commissioner to appoint, in writing, "any person" as a member of a community fire unit and to terminate an appointment "at any time in accordance with guidelines established by the Commissioner" [proposed s 74D];
 - (c) the objects⁵⁸ and functions of community fire units⁵⁹, with the exercise of these functions subject to the Commissioner's direction and control and any operational guidelines issued [proposed s 74C]; and

⁵⁷ Mr David Campbell MP, Minister for Regional Development, Legislative Assembly *Hansard*, 24 May 2005.

⁵⁸ The objects of a community fire unit are to "assist with the defensive protection of homes during bush fires and to carry out other fire protection work under the direction of the Commissioner": proposed s 74C(1).

⁵⁹ Proposed s 74C(2) of the Bill lists the functions of a community fire unit. These functions include fire prevention work, assisting fire fighters during a bush fire, recovery operations and fire safety education.

Fire Brigades Amendment (Community Fire Units) Bill 2005

- (d) the supply of training and equipment that the Commissioner considers necessary for each community fire unit to exercise its functions [proposed s 74E].
4. The Bill also:
- (a) provides that any property damage caused by any community fire unit member in the exercise in good faith of his or her statutory functions is considered to be damage by fire for the purposes of any fire insurance policy covering the property⁶⁰ [proposed s 38(1)]; and
 - (b) protects a community fire unit member from any action, liability, claim or demand for any 'good faith' act or omission done in executing his or her statutory functions [schedule 1[6]]; and
 - (c) extends the existing protection from liability for things done in 'good faith' to include things omitted to be done [schedule 1[5]].⁶¹
5. The Bill is to commence on the date of assent [proposed s 2].

Issues Considered by the Committee

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| <p>6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

⁶⁰ Section 38(1) of the Act currently applies to property damage caused by the Commissioner, the officer in charge at a fire or a hazardous material incident or any member of a fire brigade. All persons to whom s 38(1) applies are, however, only covered in respect of property damage 'caused in the exercise of a function to protect persons from injury or death or property from damage if those persons are, or the property is, endangered by fire or endangered by the escape or likely escape of hazardous material': s 38(2). Similar provisions are contained in s 28 of the *Rural Fire Act 1997*

⁶¹ Section 78 of the Act currently applies to 'the Minister, the Commissioner, any member of staff of the Department [defined to be the NSW Fire Brigades], any member of a fire brigade or any person acting under the authority of the Commissioner'. Similar provisions covering acts and omissions exist in s 128 of the *Rural Fires Act 1997* and s 41 of the *State Emergency and Rescue Management Act 1989*.

9. GAMBLING (TWO-UP) AMENDMENT BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Grant McBride MP
Portfolio:	Gaming and Racing

Purpose and Description

1. The object of the Bill is to amend the *Gambling (Two-up) Act 1998* (the Act) to provide for two-up to be played on commemorative days other than Anzac Day.

Background

2. In his second reading speech, the Minister stated that:

This bill provides for amendments arising from the statutory review of the *Gambling (Two-up) Act 1998*...As part of the review, submissions were invited from interested parties...The submission received from the Services Clubs Association proposed that the playing of two-up be allowed on a limited number of commemorative days in addition to Anzac Day.⁶²

3. The second reading speech also described the consultation undertaken on this proposal:

[T]he following organisations were contacted to seek their views on the proposal: the Returned Services League (RSL), that (sic) Vietnam Veterans Association, the Vietnam Veterans Federation of Australia, the Naval Association of Australia, the Royal Australian Air Force Association, the Ministry for Police, NSW Police, the Australian Hotels Association, Clubs NSW and the Club Industry Advisory Council. All but one of these organisations has supported the proposal.⁶³

The Bill

4. The Bill amends the Act to:
 - (a) provide for the regulations to prescribe commemorative days on which two-up may be played on the same conditions as apply to Anzac Day [Schedule 1(3)]⁶⁴;
 - (b) prohibit the playing of two-up before 12 noon on 11 November in any year;
 - (c) enable two-up games to be conducted on any premises on a commemorative day, including service clubs and hotels [Schedule 1(5)];

⁶² The Hon Grant McBride MP, Legislative Assembly *Hansard*, 25 May 2005.

⁶³ The Hon Grant McBride MP, Legislative Assembly *Hansard*, 25 May 2005.

⁶⁴ “[I]t is envisaged that the playing of two-up will be extended on a trial basis in 2005 on two occasions only, that is, Victory in the Pacific Day on 15 August and Remembrance Day on 11 November... Following Remembrance Day this year, the extended operation of games of two-up will be reviewed in consultation with key stakeholders to determine whether the consultation should continue beyond the trial period”: The Hon Grant McBride MP, second reading speech, Legislative Assembly *Hansard*, 25 May 2005.

Gambling (Two-up) Amendment Bill 2005

- (e) continue the requirement that all payments or other benefits involved in a two-up game conducted in a registered club be disposed of for the benefit of a charity or charitable purpose, but allow for regulations to prescribe those charities, bodies or organisations which may only benefit from a disposal [Schedule 1[6]]; and
- (f) provide for the regulations to require registered clubs to report on the disposal of all such payments or benefits [Schedule 1[7]].

Issues Considered by the Committee

<p>5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>
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The Committee makes no further comment on this Bill.

10. NATIONAL PARK ESTATE (RESERVATIONS) BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Craig Knowles MP
Portfolio:	Natural Resources

Purpose and Description

1. The Bill transfers certain lands to the national park estate.

Background

2. The following background was set out in the second reading speech:

In 2000, following a three-year comprehensive regional assessment, [the State Government] increased the reserve system in the southern region of New South Wales by about 325,000 hectares and added a further 60,000 hectares to protected areas of State forest... [creating] a continuous corridor of national parks and reserves stretching 350 kilometres from the Victorian border to Macquarie Pass, north of Nowra, with important links from the coast to the escarpment...

[The Bill] adds a further 5,500 hectares of new national parks and more than 1,000 hectares of new State conservation areas to the reserve system, with zero impact on timber supply. It provides for additions to Monga National Park to protect under target old-growth, rainforest and other forest ecosystems. It gives additional protection of the upper catchment of the Mongarlowe River. Additions to Deua National Park will now fully protect the upper Deua River catchment, while additions to Murramarang National Park will protect a significant stand of old-growth spotted gum. The incorporation of a section of South Brooman State Forest into the Murramarang National Park will mean the last remaining timber production compartment east of the Princes Highway between Ulladulla and Batemans Bay is protected with a reserve.⁶⁵

The Bill

3. The Bill revokes the dedication as State forest of lands that are to be:
 - reserved under the *National Parks and Wildlife Act 1974*;
 - vested in the Minister for the Environment for the purposes of Pt 11 of that Act; or
 - made subject to the *Crown Lands Act 1989*.
4. The Bill also:
 - reserves certain lands in revoked State forests as national park or state conservation area;
 - reserves certain Crown land as part of Tallaganda State Conservation Area;

⁶⁵ The Hon C J Knowles MP, Minister for Natural Resources, Legislative Assembly *Hansard*, 25 May 2005. The regional assessment referred to by the Minister forms part of the State Government's *NSW Biodiversity Strategy*, administered by the National Parks & Wildlife Service.

National Park Estate (Reservations) Bill 2005

- vests certain lands in revoked State forests in the Minister for the Environment for the purposes of Pt 11 of the *National Parks and Wildlife Act 1974*;
- vests certain lands in revoked State forests in the Crown as Crown land and makes the lands subject to the *Crown Lands Act 1989*;
- declares certain lands in State forests as special management zones under the *Forestry Act 1916*;
- enables the Director-General of the Department of Environment and Conservation to adjust the descriptions of land set out in the Schedules to the Bill in order to alter the boundaries of the land for the purposes of the more effective management of national park estate land and State forest land and to adjust boundaries to public roads (so long as the adjustment will not result in any significant reduction in the size or value of any such land); and
- amends the *Native Title (New South Wales) Act 1994* to preserve native title rights and interests in respect of a reservation or vesting of, or declaration over, land or waters by the operation of the proposed Act.

Issues Considered by the Committee

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| 5. The Committee has not identified any issues under s 8A(1)(b) of the Legislation Review Act 1987. |
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The Committee makes no further comment on this Bill.

11. OCCUPATIONAL HEALTH AND SAFETY (WORKPLACE DEATHS) BILL 2005

Date Introduced:	27 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Della Bosca MLC
Portfolio:	Commerce

Purpose and Description

1. The Bill amends:
 - the *Occupational Health and Safety Act 2000* (the OH&S Act) to make it an offence for a person who owes a duty under Part 2 of that Act to engage in reckless conduct that causes death at a workplace; and
 - the *Criminal Appeal Act 1912* (the CAA) to provide for a right of appeal to the Court of Criminal Appeal where a person has been convicted and sentenced to imprisonment by the Industrial Relations Commission in Court Session for the proposed new offence.

Background

2. The following background was given in the second reading speech:

In October 2004 the Minister released the *Occupational Health and Safety Legislation Amendment (Workplace Fatalities) Bill 2004* for consultation. Since then the Government has consulted widely with employers and unions on the nature of the workplace death offence...

In a ministerial statement on 5 May 2005, the Minister announced the release of a revised bill - the *Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005*... The revised bill is aimed at a small minority of rogues whose indifference to health and safety in the workplace results in death. The bill represents the most effective means of targeting those who are most culpable and deserving of greater degrees of punishment.⁶⁶

The Bill

3. The Bill inserts proposed Part 2A (s 32A and s 32B) into the OH&S Act. Proposed s 32A provides that a person:
 - (a) whose conduct causes the death of another person at any place of work; and
 - (b) who owes a duty under Part 2 of the OHS Act with respect to the health or safety of that person when engaging in that conduct; and

⁶⁶ The Hon K A Hickey MP, Legislative Assembly *Hansard*, 27 May 2005.

Occupational Health And Safety (Workplace Deaths) Bill 2005

- (c) who is reckless⁶⁷ as to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct,
- is guilty of an offence.
4. Generally, Part 2 of the OH&S Act creates a duty to ensure that workplaces are safe and without risks to health. These duties are owed by:
- employers [s 8];
 - self-employed persons [s 9];
 - controllers of work premises, plant or substances [s 10]; and
 - designers, manufacturers and suppliers of plant and substances [s.11].⁶⁸
5. The proposed offence will carry a maximum penalty of 15,000 penalty units (currently \$1,650,000) in the case of a corporation; or imprisonment for 5 years or 1,500 penalty units (currently \$165,000), or both, in the case of an individual.⁶⁹
6. It is a defence to proceedings against a person for that offence if the person proves that there was a *reasonable excuse* for the conduct. It was noted in the second reading speech that:
- [w]hat constitutes a reasonable excuse will be a matter for the court to determine on the particular facts of a case, but will require a compelling and overriding reason why reckless conduct causing death in the workplace might be excused.⁷⁰
7. For the purposes of the proposed section:
- a person's conduct *causes* death if it substantially contributes to the death;
 - the death of a person is taken to have been caused at a place of work if the person is injured at the place of work but dies elsewhere as a result of the injury; and

⁶⁷ "Recklessness" has been defined as heedless or careless conduct where the person can foresee some probable or possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences: The Hon K A Hickey MP, Legislative Assembly *Hansard*, 27 May 2005.

⁶⁸ Thus, eg, employers must:

- ensure that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health;
- ensure that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used;
- ensure that systems of work and the working environment of the employees are safe and without risks to health;
- provide such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work; and
- provide adequate facilities for the welfare of the employees at work: s 8 of the OH&S Act.

⁶⁹ A similar offence is contained in s 32 (Duty not to recklessly endanger persons at workplaces) of the Victorian *Occupational Health and Safety Act 2004*. On the background to this provision, see H J Glasbeek, *Crime, Health and Safety and Corporations: Meanings of the failed Crimes (Workplace Deaths and Serious Injuries) Bill*, Working Paper No.29, Centre for Employment and Labour Relations Law, University of Melbourne, February 2004.

⁷⁰ The Hon K A Hickey MP, Legislative Assembly *Hansard*, 27 May 2005.

- it does not matter that the conduct that causes death did not occur at the place of work [proposed s 32A(4).
8. Directors and persons concerned in the management of a corporation are taken to owe a duty under Part 2 of the OH&S Act if the corporation owes such a duty [proposed s 32A(6)].
 9. However, such directors and managers are *not* held liable for the actions of the corporation under s 26 of the OH&S Act. Directors and managers are therefore liable for any offence they *personally commit* pursuant to the duty they are taken to owe under Part 2 [proposed s 32A(6)].

Proceedings

10. Proceedings for an offence against the proposed Part may be instituted only with the written consent of a Minister of the Crown or by an inspector appointed under the OH&S Act [proposed s 32B(2)].⁷¹
11. However, any person who would, but for proposed s 32B(2), have been entitled to institute proceedings for such an offence may make a written application to the WorkCover Authority (the Authority) for a statement of the reasons why proceedings for an offence have not been instituted.
12. The Authority must then provide a statement of those reasons to the applicant as soon as practicable after the application is made, unless the alleged conduct has been referred to the Director of Public Prosecutions for consideration of the institution of proceedings.
13. There are no appeals against acquittals for proceedings instituted under the Bill's amendments [proposed s 32B(4) – see s 197A of the *Industrial Relations Act 1996*].

Amendment of *Criminal Appeal Act 1912*

14. The Bill inserts proposed s 5AG into the CAA so that a person convicted of an offence under proposed s 32A of the OH&S Act and sentenced to any term of imprisonment by the Industrial Relations Commission in Court Session (including a sentence imposed on appeal) may appeal to the Court of Criminal Appeal against the person's conviction (including any sentence imposed).⁷²
15. The Court of Criminal Appeal, in proceedings before it on an appeal under the proposed section, may confirm the determination made or may order that the determination be vacated, and make any determination that the Industrial Relations Commission in Court Session could have made on the evidence heard on appeal [proposed s 5AG(3)].

⁷¹ Section 106 of the OH&S Act generally also allows proceedings for offences against the OH&S Act to be instituted by the secretary of an industrial organisation of employees, any member or members of which are concerned in the matter to which the proceedings relate, or with the written consent of an officer prescribed by the regulations.

⁷² No such appeal may be made unless the person has first exercised any right to appeal to the Full Bench of the Industrial Relations Commission in Court Session under the *Industrial Relations Act 1996*. The section has effect despite s 179 (Finality of decisions) of that Act.

Amendment of *Occupational Health and Safety Regulation 2001*

16. The Bill makes a consequential amendment to cl 358 of the *Occupational Health and Safety Regulation 2001* to provide for the construction of references in proposed s 32B for the giving of reasons by the WorkCover in connection with a decision not to prosecute for the proposed offence under s 32B in relation to mines.
17. In the case of mines this function will be exercised by the Department responsible to the Minister for Mineral Resources who has administration of the OH&S Act in relation to mines.

Issues Considered by the Committee

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| <p>18. The Committee did not identify any issues for consideration under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

12. PETROLEUM (SUBMERGED LANDS) AMENDMENT (PERMITS AND LEASES) BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Mineral Resources

Purpose and Description

1. The object of this Bill is to amend the *Petroleum (Submerged Lands) Act 1982* (the Act) in relation to the renewal of petroleum explorations permits, the imposition of conditions on petroleum retention leases and to confirm the area to which the principal Act applies.

Background

2. The Act applies to petroleum resources in submerged lands adjacent to the State of NSW up to a limit of three nautical miles (adjacent area).⁷³ Among other things, the Act prohibits the exploration of petroleum in the adjacent area without a permit or otherwise than in accordance with a permit (s 20). A permittee may be granted a retention lease in respect of an area covered by their permit (Division 2A).⁷⁴
3. In his second reading speech, the Minister stated that:

The objects of this bill are to amend the *Petroleum (Submerged Lands) Act 1982*, to implement recommendations arising from a national competition policy review...

The review concluded that, in the interests of making exploitation acreage available to subsequent explorers more quickly, a limit should be placed on the number of times an exploration permittee can renew the title...

The national competition policy review also concluded that there was scope to reduce potential compliance costs for industry in relation to retention leases... Currently, the holder of a retention lease can be asked to review the commerciality of a recovery twice within the five-year term. This was considered excessive...

[O]nly one exploration permit is currently in force. This means that the impact of the bill is negligible. However, it ensures that legislation applying to the State and adjoining Commonwealth jurisdiction is consistent and enables New South Wales to meet its national competition policy obligations.⁷⁵

⁷³ The Hon Kerry Hickey MP, Minister for Mineral Resources, Legislative Assembly *Hansard*, 25 May 2005.

⁷⁴ A retention lease is a holding right available if a petroleum discovering is currently uneconomic for exploitation but is likely to become economic within 15 years: The Hon Kerry Hickey MP, Minister for Mineral Resources, second reading speech, Legislative Assembly *Hansard*, 25 May 2005.

⁷⁵ The Hon Kerry Hickey MP, Minister for Mineral Resources, second reading speech, Legislative Assembly *Hansard*, 25 May 2005.

The Bill

4. The principal Act does not presently limit the number of renewals of an area that is the subject of an existing permit, although a renewal must be in respect of a reduced area.⁷⁶ The Bill limits to two the maximum number of renewals of exploration permits granted on or after 1 January 2006. The amendments are not to apply to existing permits [Schedule 1[1] and [2]].
5. A statutory condition of a retention lease is that, upon Ministerial request, a lessee will re-evaluate the commercial viability of petroleum production in the lease area and inform the Minister of the results. A request cannot be made more than twice during the lease term.⁷⁷ The Bill reduces from two to one the number of requests that the Minister may make during the lease term [Schedule 1[3]]. This reduction applies in respect of existing leases. Any second Ministerial request for a re-evaluation made of an existing lessee before the Bill's commencement is deemed not to have been made [Schedule 1[7]].
6. The Bill also makes a minor amendment to ensure that the area identified in the principal Act as the adjacent area of NSW has not changed as a result of an amendment to the *Survey (Geocentric Datum of Australia) Act 1999* [Schedule 2[1] and [2]].
7. The ensuing Act is to commence on the date of assent [proposed s 2].

Issues Considered by the Committee

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| <p>8. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

⁷⁶ *Petroleum (Submerged Lands) Act 1982*, ss 31 and 32.

⁷⁷ *Petroleum (Submerged Lands) Act 1982*, s 39H

13. POULTRY MEAT INDUSTRY AMENDMENT (PREVENTION OF NATIONAL COMPETITION POLICY PENALTIES) BILL 2005

Date Introduced: 25 May 2005
House Introduced: Legislative Council
Minister Responsible: The Hon Ian Macdonald MLC
Portfolio: Primary Industries

Purpose and Description

1. The object of this Bill is to amend the *Poultry Meat Industry Act 1986* so as:
 - (a) to replace the current scheme for the regulation of the relationship between poultry growers and poultry processors with a scheme that:
 - (i) establishes matters to be addressed by any poultry growing agreement entered into between a poultry grower and a poultry processor, and
 - (ii) establishes standard provisions (from which the poultry grower and poultry processor may opt out) for inclusion in any such agreement, and
 - (iii) provides statutory authority for collective bargaining by poultry growers in their negotiations with poultry processors, and
 - (b) to vary the constitution and functions of the Poultry Meat Industry Committee by:
 - (i) abolishing the positions currently held by poultry growers and poultry processors, and
 - (ii) giving the Committee a role in developing the prescribed matters and standard provisions referred to in paragraph (a), and
 - (c) to provide for the constitution and function of a Poultry Meat Industry Advisory Group, and
 - (d) to enact minor, consequential and ancillary provisions, and provisions of a savings or transitional nature.

Background

2. In his second reading speech, the Minister stated that:

The problem addressed by this legislation [the Poultry Meat Industry Act 1986] and similar legislation in other States is the well-accepted fact that contract growers are in a weak position relative to the market power of processors and that statutory protection is required to prevent market power abuse...

In both 1991 and 2001 reviews of the Poultry Meat Industry Act 1986 were undertaken to fulfil the New South Wales Government's commitments under the competition principles agreement...

Poultry Meat Industry Amendment (Prevention Of National Competition Policy Penalties) Bill 2005

[I]n 2003-04, the New South Wales Government was hit with a \$12.86 million penalty for keeping the Poultry Meat Industry Act 1986... However, I subsequently... reached a breakthrough agreement under which the [National Competition Council] agreed to certain concession about penalties if a further independent review of the Act was undertaken...

The bill I have presented to Parliament reflects the findings of the 2004 review...

[The] Bill seeks to retain as much in the way of grower protections as possible whilst also avoiding further financial penalties.⁷⁸

Issues Considered by the Committee

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| <p>3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

⁷⁸ The Hon Ian Macdonald MLC, Minister for Primary Industries, Legislative Council *Hansard*, 25 May 2005.

14. RURAL WORKERS ACCOMMODATION AMENDMENT BILL 2005

Date Introduced:	24 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Della Bosca MLC
Portfolio:	Industrial Relations

Purpose and Description

1. The *Rural Workers Accommodation Act 1969* (the Act) deals with the provision of accommodation for rural workers and certain other related purposes. The Bill amends the Act to provide for a rural workers accommodation regulatory regime that is consistent with the regulatory regime of the *Occupational Health and Safety Act 2000* (the *OH&S Act*).
2. The Bill also makes a consequential amendment to the *OH&S Act* to provide that the Act is no longer *associated occupational health and safety legislation* for the purposes of the *OH&S Act*.

Background

3. The second reading speech stated that:

This Bill arises out of the recent review of the *Rural Workers Accommodation Act 1969* conducted by WorkCover as part of the Government's National Competition Policy obligations. The purpose of the review was to examine any restrictions on competition imposed by the Act, and to determine whether they were outweighed by a net public benefit. The review concluded that the occupational health and safety benefits of providing rural workers with accommodation in particular circumstances outweighed any restrictive effect of the requirement to provide it.

Stakeholders who were consulted in the course of the review supported retaining the requirement on occupational health and safety grounds. Accordingly, the review recommended that the requirement in the 1969 Act to provide accommodation remain, but that significant structural amendments to the legislation be made. The Bill gives effect to this recommendation...

The Bill will not be commenced until the consultation is complete and the code is in place; the Bill and code will be implemented and operate in tandem. The current regime will stay in place until the Bill commences.⁷⁹

The Bill

4. The Bill provides that a person who has control of rural premises must provide free and suitable accommodation to a rural worker who works at the rural premises if, due to the nature of the work, the rural worker must live for a period exceeding 24 hours at or near the rural premises [proposed s 5 & 6].

⁷⁹ The Hon David Campbell MP, Legislative Assembly *Hansard*, 24 May 2005.

Rural Workers Accommodation Amendment Bill 2005

5. Failure to comply with this provision is an offence that carries a maximum penalty of 250 penalty units (currently \$27,500). However, it is a defence to this offence if the person proves that:
 - (a) it was not reasonably practicable to comply with the provision; or
 - (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision [proposed s 8].
6. The Bill provides for a Code of Practice to provide guidance about what kind of accommodation should be provided [proposed Part 3].⁸⁰ A Code of Practice is now being prepared in consultation with industry stakeholders.⁸¹
7. Under the Bill, codes of practice are prepared by the WorkCover Authority and, after consultation, may be approved by the Minister. A code takes effect on its publication in the Gazette or on a later specified day. A person is not liable to any civil or criminal proceedings solely because they failed to comply with an approved code of practice [proposed s 15(2)].
8. The second reading speech stated that:

[T]he Bill harnesses the provisions of the occupational health and safety legislation that relate to inspectors and enforcement. ... people appointed as WorkCover inspectors under the occupational health and safety legislation will also be inspectors under the rural workers accommodation legislation.⁸²
9. In addition, the Bill:
 - (a) makes it clear that the Act adds to the protection provided by the *OH&S Act* by providing that if a provision of the *OH&S Act* applies to rural premises to which the Act applies, that provision continues to apply, and must be observed, in addition to the Act⁸³;
 - (b) provides that the *OH&S Act* will prevail if there is an inconsistency between the *OH&S Act* and the Act;
 - (c) makes it clear that compliance with the Act is not in itself a defence in any proceedings for an offence against the *OH&S Act*;
 - (d) provides that evidence of a relevant contravention of the Act is admissible in any proceedings for an offence against the *OH&S Act*;
 - (e) prevents a person being punished twice for an act or omission that constitutes an offence under both the Principal Act and the *OH&S Act*.
10. The Bill also imposes liability on directors and managers of corporations for breaches of the Principal Act or its regulations by the corporation, whether or not the directors or managers were involved in decisions leading to breaches of the Act. It also makes

⁸⁰ The Schedule to the Act contains a highly detailed and prescriptive list of the type of accommodation to be provided, including specifications as to the material to be used in external walls, the height of internal walls, floor coverings and the damp and termite proofing required.

⁸¹ The Hon David Campbell MP, Legislative Assembly *Hansard*, 24 May 2005.

⁸² The Hon David Campbell MP, Legislative Assembly *Hansard*, 24 May 2005.

⁸³ Proposed Part 4 deals with the relationship between the Act and the *OH&S Act*.

clear that nothing in the proposed Part gives rise to or affects civil proceedings (proposed s 7).

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Principles of criminal responsibility: proposed s 22

11. Proposed section 22(1) provides that if a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:
 - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
12. This section potentially offends traditional principles of criminal responsibility, including the rules relating to complicity, burden of proof and the fault element of the offence. In these ways, section 22(1) may be considered to trespass on personal rights and liberties by exposing individuals to criminal responsibility in circumstances which are wider, and according to standards which are lower (with respect to both fault element and burden of proof), than those which have been traditionally associated with the criminal law.
13. The Committee notes however, that departures from traditional principles of criminal responsibility of the sort found in s 22 of the Bill are by no means unprecedented. In fact, they have become an increasingly common feature of legislative offences, particularly in 'regulatory' fields such as occupational health and safety and environment protection. The Committee also notes that s 22 of the Bill is identical to s 26 of the *OH&S Act*.

Personal liability for corporate conduct

14. Section 22(1) allows for certain corporate officers to be convicted of the corporation's offence on the grounds that they failed to adequately police (use "all due diligence") the actions of the corporation. This impliedly extends not only to those offences that they knew the company was committing, but also those that they would have been aware of if they had acted with due diligence.
15. This goes considerably beyond the reach of the conventional rules that extend criminal liability beyond the principal offender. Ordinarily, in order for a person to be convicted of being an accessory to a crime committed by another, the prosecution must prove that the alleged accessory encouraged or assisted the principal offender to

engage in the criminal offence⁸⁴ and that they had the intention to encourage or assist.⁸⁵

16. However, the Committee is of the view that directors and others concerned in the management of a corporation have voluntarily undertaken their positions and the duties and liabilities that go with their position in the corporation. One such duty is to be vigilant in preventing offences in the workplace, especially where such offences create the risk of harm.

Reverse Onus

17. The Committee notes that section 22 reverses the onus of proof so that a defendant must prove their innocence rather than the prosecution prove guilt. Although clause 22 does not set out the standard of proof that is to apply, the Committee notes that the term “satisfies the court” used in this context is routinely interpreted as imposing a balance of probabilities standard and not a beyond reasonable doubt standard.
18. Reversing the onus of proof is inconsistent with the presumption of innocence, which is well-recognised as a fundamental human right, protected under the common law⁸⁶ and under international law.⁸⁷ However, the Committee notes that the presumption of innocence is not absolute. Even in *Woolmington*, Lord Sankey qualified his now famous “golden thread” statement, by adding that it was “subject ... to any statutory exception.”
19. Further, it is widely accepted in Australia and in comparable jurisdictions that the presumption of innocence can be qualified in pursuit of legitimate objectives. This is so even in jurisdictions such as Canada where the right to be presumed innocent is constitutionally entrenched.⁸⁸ The European Court of Human Rights has ruled that reverse onus offences can, depending on their terms and the seriousness of the penalty associated with the crime in question, be regarded as compatible with the right to be presumed innocent which is protected by Article 6(2) of the *European Convention on Human Rights*.⁸⁹

Fault Element

20. The extent to which a reverse onus provision trespasses on individual rights and liberties may be exacerbated by the fault element of the offence. Placing the burden of proof on the accused and assessing fault according to an objective standard (eg, absence of due diligence or negligence) is a more significant interference with rights and liberties than placing the burden of proof on the accused and assessing fault according to a subjective standard (intent, knowledge or reckless).

⁸⁴ See, for example, *Phan* [2001] NSWCCA 29.

⁸⁵ See *Giorgianni* (1985) 156 CLR 473.

⁸⁶ The so-called “golden thread” per Sankey L in *Woolmington v DPP* (1935) AC 462 (HL).

⁸⁷ See Article 14(2) of the *International Covenant on Civil and Political Rights*, which states that: ‘Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law’.

⁸⁸ See article 11 of the *Canadian Charter of Rights and Freedoms*.

⁸⁹ See *Salabiaku v France* (1988) 13 EHRR 379.

21. In this context, the Committee notes that s 22 of the Bill, when compared with equivalent provisions in a number NSW statutes enacted in recent years, is at the harsher end of the spectrum. Section 22 of the Bill (and s 26 of the *OH&S Act* on which it is based) only allows the accused to avoid liability where s/he “was not in a position to influence” or “used all due diligence”. By contrast, the equivalent provision in the *Native Vegetation Act 2003* (s 45) provides a third basis on which an individual director or other person concerned in the management of the corporation can avoid liability, namely if “the corporation contravened the provision without the knowledge of the person”.
22. Slightly less generous to the accused, but still more generous than s 22 of the Bill, is s 169 of the *Protection of the Environment Operation Act 1997*, which also offers a third limb, but in different terms, namely ‘the corporation contravened the provision without the knowledge actual, imputed or constructive of the person’ (s 69(1)(a)).⁹⁰
23. The Committee is of the view that, given the subject matter of the Bill, the most relevant reference point is the *OH&S Act*, with which it is identical. Further, the Committee is of the view that reliance on a due diligence standard (and the non-inclusion of a ‘knowledge’ standard) in the Bill is consistent with the policy objective that underlies the *OH&S Act* and now the Bill, namely to encourage directors and others concerned in the management of corporations to personally take care (ie, act with due diligence) with respect to the operations of the corporation to minimise the risk of harm in the workplace.

Individual liability as an alternative to corporate liability

24. The Bill empowers the prosecuting authority to exercise significant procedural discretion with respect to the ‘target’ of criminal prosecutions for offences under the Act. Section 22(2) provides that individual directors and other persons concerned in the management of the corporation may be convicted “whether or not the corporation has been proceeded against or been convicted”. Framed in this way, the prosecuting authority has the choice of proceeding against the ‘person’ that committed the offence (ie. the corporation), or the individuals who failed to prevent the offence.
25. The Bill is silent on the effect of an acquittal of a corporation, although arguably a director or manager may be charged and convicted under clause 22(2) even though the corporation in relation to the same facts has been found ‘not guilty’. This raises questions of double jeopardy and abuse of process. In any event, the terms of clause 22 require the prosecution to prove first that the corporation did commit an offence.

26. The Committee notes that managers and directors of corporations voluntarily undertake the duties and liabilities of their position, including helping to prevent offences in the workplace that might cause harm.

27. The Committee also notes that, although reversing the onus of proof is inconsistent with the fundamental right of a person to be presumed innocent, this right is not absolute.

⁹⁰ See also *Legal Profession Act 2004*, s 719.

- 28. The Committee further notes the important policy objectives of the Bill (consistent with the *OH&S Act*) to protect workers from harm in the workplace and to encourage managers and directors of corporate employers to act with due diligence to minimise the risk of harm in the workplace.**
- 29. The Committee refers to the Parliament the question as to whether clause 22 unduly trespasses on personal rights and liberties.**

The Committee makes no further comment on this Bill.

15. SURVEYING AMENDMENT BILL 2005

Date Introduced:	24 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Tony Kelly MLC
Portfolio:	Lands

On 25 May 2005 the Bill passed all stages in the Legislative Assembly. Under s 8A(2) of the *Legislation Review Act 1989*, the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. The Bill amends the *Surveying Act 2002* (the Act) to make further provision with respect to:
 - the functions of the Surveyor-General;
 - the registration of surveyors;
 - the control of surveys; and
 - the constitution and functions of the Board of Surveying and Spatial Information (the Board).

Background

2. It was noted in the second reading speech that:

[t]he existing Surveying Act was brought into force in 2003 as a result of the recommendations of the national competition policy review of the Surveyors Act 1929 and consultation with key stakeholders.

Whilst the Act is a great improvement on the earlier legislation, a number of further reforms are made in the present bill.⁹¹

The Bill

3. The Bill:
 - allows a survey regulator⁹² to require a registered surveyor to correct a survey error; and if he or she does not do so, appoint another surveyor to do so [proposed s 9A(2)];
 - specifies that failure to correct such an error constitutes professional misconduct [note to proposed s 9A(1)];
 - permits the Surveyor-General to appoint another surveyor to perform work in certain circumstances [proposed s 9B];

⁹¹ The Hon D A Campbell MP, Legislative Assembly *Hansard*, 24 May 2005.

⁹² The Surveyor-General or Registrar-General regulates the making of general surveys, and the Chief Inspector of Mines or Chief Inspector of Coal Mines regulates the making of mining surveys: proposed s 9A(6).

Surveying Amendment Bill 2005

- enables disciplinary action to be taken against a surveyor who has removed his or her name for the register of surveyors to avoid investigation of a complaint [proposed s 16A];
- alters the composition of the Board [amended s 27(2)(e) and repeal of cl 4A(3) of the *Surveying Regulation 2001*];
- prohibits the unlawful disclosure of information obtained in the administration of the Act [proposed s 35A];
- provides that regulations may be made with respect to the making of complaints to the Board [amended s 36(2)];
- provides that Ministers must consult on changes to certain regulations relating to mining surveys [proposed s 36(3)];
- permits complaints against surveyors to be dealt with in accordance with the *Policy for the Consideration of Complaints Against Surveyors* issued by the Board and in force from time to time [Sch 2];
- provides a defence of absolute privilege for defamation for participants in the complaint process [Sch 3];⁹³ and
- empowers certain survey regulators to require a registered surveyor to correct any survey error, with a failure to comply constituting professional misconduct.

Issues Considered by the Committee

Trespasses on personal rights and liberties [s 8A(1)(b)(i) *LRA*]

Strict liability: proposed s 35A

4. The Bill provides that a person who discloses any information obtained in the administration of the Act is guilty of an offence carrying a maximum penalty of 50 penalty units (currently \$5,500), unless the disclosure is made:
 - (a) with the consent of the person to whom the information relates;
 - (b) in connection with the administration of the Act;
 - (c) for the purpose of legal proceedings arising out of the Act or of any report of any such proceedings; or
 - (d) with other lawful excuse [proposed s 35A].
5. As proposed s 35 does not explicitly require any criminal intent, it may be held to be an offence of *strict liability*. If so, a person may offend against proposed s 35A through mere inadvertent disclosure of any information obtained in the administration of the Act.
6. Strict liability is often imposed for regulatory offences where there is a need to ensure persons take all reasonable steps to avoid the offence.

⁹³ This exception to the *Defamation Act 1974* is “necessary to ensure that complaints can be made to, and be fully considered, by the Board”: The Hon D A Campbell MP, Legislative Assembly *Hansard*, 24 May 2005.

7. The Committee has previously expressed the view that providing for strict liability is a very serious matter, and should be:
- imposed only after careful consideration of all available options;
 - subject to defences wherever possible where contravention appears reasonable; and
 - have only limited monetary penalties.⁹⁴

8. The Committee considers that strict liability offences should only be imposed when clearly in the public interest, and that the severity of punishment should reflect the lack of criminal intent.

9. Given the need for persons to take care not to disclose information obtained in the administration of the Act and the limit on any monetary penalty, the Committee does not consider that the lack of an explicit element of criminal intent in proposed s 35A trespasses unduly on personal rights and liberties

The Committee makes no further comment on this Bill.

⁹⁴ See, eg, *Legislation Review Digest* No 3 of 2005. Although proposed s 35(4) refers to “lawful excuse”, that concept connotes a *legal right* to do something – eg, not being guilty of trespassing if a person is on a property as an invitee of the owner – rather than a defence such as mistake of fact.

16. SYDNEY 2009 WORLD MASTERS GAMES ORGANISING COMMITTEE BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Sandra Nori MP
Portfolio:	Minister for Tourism and Sport and Recreation

Purpose and Description

1. The object of this Bill is to constitute the Sydney 2009 World Masters Games Organising Committee ('Committee') as a statutory corporation until 30 June 2010 and to specify its functions.

Background

2. In her second reading speech, the Minister stated:

Under the Games host city contract, the Government is required to establish an organising committee as a legal entity under New South Wales. Following analysis of a number of options, a limited-life statutory entity similar to the Olympic Co-ordination Authority was considered the best mechanism to deliver the Government's contractual obligations to the International Masters Games Association.⁹⁵

The Bill

3. The Bill:
 - (a) constitutes the Committee as a corporation and provides that it is a statutory body representing the Crown for the purposes of any Act, including the *Public Finance and Audit Act 1983* [Part 2];
 - (b) specifies that the objective of the Committee is to plan, organise and stage the Sydney 2009 World Masters Games⁹⁶, and outlines its functions⁹⁷, permissible delegations of functions and matters it must take into account in exercising its functions [Part 3];
 - (c) provides for the management of the Committee and the appointment of staff and consultants [Part 4];

⁹⁵ The Hon Sandra Nori MP, Legislative Assembly *Hansard*, 25 May 2005.

⁹⁶ This objective is to be performed "in accordance with the obligations imposed, and the rights conferred, under the Host City Contract": proposed s 6. The Host City Contract is defined as the "contract between IMGA [International Masters Games Association] and the Crown in right of New South Wales, executed on 24 November 2004": proposed s 3(1).

⁹⁷ The Committee's functions include organising the Games' sports competition program, procuring and organising venues for the Games, making transport arrangements for participants and officials of the Games, engaging in marketing and promotion of the Games, managing Games expenditure, and co-ordinating Games-related activities with State and Commonwealth government agencies and private organisations: proposed s 7(3).

- (d) specifies financial matters relating to the Committee's operation [Part 5];
 - (e) constitutes the Sydney World Masters Games Advisory Committee, its functions, membership and procedure [Part 6 and Schedule 1];
 - (f) provides for the dissolution of the Committee on 30 June 2010, the transfer of staff, assets, rights and liabilities after it is dissolved [Part 7] and for amendments to other Acts consequent upon its dissolution [Schedule 3]; and
 - (g) specifies other matters, including the protection of certain persons from personal liability for 'good faith' acts or omissions, the Committee's power of debt recovery and the regulation-making power [Part 8].
4. Proposed s 36(1) prohibits a person from disclosing any information obtained in connection with the administration or execution of the Act, subject to a number of exceptions, including the consent of the person from whom the information was obtained.⁹⁸ Under the Bill, a person also commits an offence if they use information that is not generally known for the direct or indirect benefit of themselves or certain other persons. The maximum penalty for this offence is 50 penalty units (\$5,500) [proposed s 36(2) and (3)].
5. The Bill commences on a day or days to be appointed by proclamation, except for the provisions relating to the Committee's dissolution [Part 7] and the consequential amendments specified in Schedule 3. These provisions are to commence on 30 June 2010 [proposed s 2]. A 'sunset' clause provides for the automatic repeal of the ensuing Act on 31 December 2010 [proposed s 43].
6. The Bill also makes consequential amendments to three Acts. For instance, it amends the *Freedom of Information Act 1982* to exempt a document containing information confidential to the International Masters Games Association from the Act's requirements [proposed s 42 and Schedule 2].

Issues Considered by the Committee

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| <p>7. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

⁹⁸ The Department of Sport and Recreation advise that the Committee will collect some personal information directly from competitors. Competitors will be required to register with the Committee to participate in the Games and, as part of that process, to offer proof that they have health insurance coverage in relation to the activities in which they will compete.

17. SYDNEY UNIVERSITY SETTLEMENT INCORPORATION AMENDMENT BILL 2005*

Date Introduced: 26 May 2005
House Introduced: Legislative Council
Member Responsible: The Hon Arthur Chesterfield-Evans
MLC

Purpose and Description

1. The objects of this Bill are:
 - (a) to set out aims and objectives of the Sydney University Settlement (*the Settlement*), and
 - (b) to require that the constitution of the Settlement be read subject to those aims and objectives, and
 - (c) to require the Settlement's property to be used exclusively to carry out its aims and objectives, and
 - (d) to prevent the Settlement's real property being disposed of unless the disposal has the approval of at least 75 per cent of members attending, and entitled to vote at, a special general meeting called to approve that disposal, and
 - (e) to prevent a member participating in, and voting at, any such meeting if the member, or a close relative or close associate of the member, may gain a financial or other benefit from the disposal, and
 - (f) to prevent the Registrar-General from registering a transfer of land held by or on behalf of the Settlement, unless a certificate under the common seal of the corporation is lodged with the Registrar-General certifying that the transfer has been approved in accordance with paragraph (d).

Issues Considered by the Committee

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| 2. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

18. TRANSPORT LEGISLATION AMENDMENT (WATERFALL INQUIRY RECOMMENDATIONS) BILL 2005

Date Introduced:	25 May 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Transport

Purpose and Description

1. The Bill:

- establishes an independent office of **Chief Investigator of the Office of Transport Safety Investigations** (the Chief Investigator) to investigate transport accidents and incidents and to enable the Minister to establish Boards of Inquiry;
- clarifies provisions of the *Rail Safety Act 2002* (the RSA) dealing with safety management systems;
- applies certain provisions of the RSA to all operators of railways (rather than only those who are accredited);
- permits regulations under the RSA to be made in relation to:
 - standards for railway operations;
 - requirements for registers of information held by operators of railways;
 - passenger safety and security;
 - train safety recordings and conditions of accreditation; and
 - conditions of accreditation and conditions of an exemption from accreditation;
- provides for the issuing of guidelines under the RSA;
- provides for certain regulatory functions that were previously undertaken by the Independent Transport Safety and Reliability Regulator (ITSRR) to be undertaken by the Waterways Authority in relation to public passenger services carried on by means of a ferry and by the Director-General of the Ministry of Transport (the Director-General) in relation to public passenger services carried on by means of a bus;
- permits the ITSRR to enter into information sharing arrangements with certain other agencies in relation to rail operations, and to make similar provision with respect to the Director-General and the Waterways Authority in relation to bus and ferry operations respectively; and
- provides for the appointment of authorised officers.

Background

2. The April 2001 *Report of the Special Commission of Inquiry into the Glenbrook Rail Accident* (the McNerny Report) contained a number of recommendations relating to the structure of rail safety management. The McNerny Report recommended the establishment of an Office of the Rail Regulator, an Office of the Co-ordinator General of Rail, a Rail Safety Inspectorate and a Rail Accident Investigation Board.⁹⁹
3. The State Government's first response to the McNerny Report was to enact the *Transport Legislation Amendment (Safety and Reliability) Act 2003*. The Committee reported on this legislation in November 2003.¹⁰⁰
4. The following background to the Bill was provided in the second reading speech:

One of the first of the major challenges the Government faced earlier this year was responding to the final report of the Special Commission of Inquiry into the Waterfall Rail Accident...Of the 127 recommendations in the report, 114 were supported by the Government, eight required further detailed review and five were not supported...
[The Bill] will achieve a number of outcomes intended by Justice McNerney's final report.¹⁰¹

The Bill

Transport Administration Act 1988

5. The Bill removes provisions relating to the Office of Transport Safety Investigations and Chief Investigator from Part 4A of the *Transport Administration Act 1988* (the TAA). Those provisions established the Office of Transport Safety Investigations and Chief Investigator as part of the ITSRR.
6. The Chief Investigator is now established as an independent office, and is to be appointed by the Governor on the recommendation of the Minister [proposed new s 45]. It was noted in the second reading speech that:

[c]onsistent with recommendation 79 of the special commission of inquiry, the Chief Investigator will be given powers to initiate investigations into transport accidents or incidents. The Chief Investigator will be responsible for "just culture" type investigations of transport safety accidents or incidents. That means investigations are conducted for the purpose of advancing transportation safety - not to assign fault or determine civil or criminal liability.¹⁰²
7. The ITSRR will monitor the compliance by transport authorities with any recommendations relating to the safe operation of transport services contained in any

⁹⁹ *Report of the Special Commission of Inquiry into the Glenbrook Rail Accident*, April 2001, at 160.

¹⁰⁰ In March 2005, the Committee reported on the *Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*, a Private Member's Bill introduced by Mr J G Brogden MP, which required that all of the 127 recommendations contained in the Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident be implemented. That Bill was not passed.

¹⁰¹ The five recommendations not supported concern the regulatory framework around the ITSRR and do not affect the addition of any recommended new safety systems: The Hon J G Watkins MP, Minister for Transport Services, Legislative Assembly *Hansard*, 25 May 2005.

¹⁰² Hon J G Watkins MP, Minister for Transport Services, Legislative Assembly *Hansard*, 25 May 2005.

Transport Legislation Amendment (Waterfall Inquiry Recommendations) Bill 2005

report by the Chief Investigator under the TAA or any other Act, or in a report of a rail safety inquiry or a transport safety inquiry (see below).

8. The Bill revises the functions of the Independent Transport Safety and Reliability Advisory Board (the Board) so that the Board's principal function is to advise and make recommendations to the Minister or the ITSRR about any matter. The Chairperson of the Board will no longer have any functions in relation to investigations and inquiries [proposed amended s 42V].

Amendment of *Rail Safety Act 2002*

9. The Bill inserts in the RSA requirements that were previously in the regulations in relation to the employment of railway employees by accredited persons.¹⁰³
10. The Bill provides for the investigation of, and inquiry into, railway accidents or incidents and other matters that may affect the safe carrying out of railway operations. Inquiries will not be conducted by the ITSRR or the Chairperson of the Board, but by the Chief Investigator.¹⁰⁴
11. Investigations are to be on a "no blame" basis, in that any information the Chief Investigator or the ITSRR obtains by way of a report may *not* be used in evidence in any civil or criminal proceedings against the operator of a railway, unless a court directs that it is in the public interest to do so.¹⁰⁵
12. The Minister may *require* the Chief Investigator to investigate and report to the Minister on any transport accident or incident, and may also constitute one or more persons as a Board of Inquiry to conduct an inquiry into any transport accident or incident (a *rail safety inquiry*) [proposed s 67].¹⁰⁶
13. Conversely, the Chief Investigator may give a written notice to the Minister requesting an inquiry be conducted in relation to any railway accident or incident. The Minister must either comply with the request, or provide the Chief Investigator with written reasons for not doing so. The relevant documents must be tabled in each House of Parliament.
14. The ITSRR may enter into an information sharing arrangement with other agencies to permit certain information to be exchanged between the ITSRR and that other agency [proposed s 109]. Any such information sharing arrangement has effect despite any

¹⁰³ Commissioner McInerney made specific recommendations concerning the need for regulations specifying requirements for safety management systems: Hon J G Watkins MP, Minister for Transport Services, Legislative Assembly *Hansard*, 25 May 2005.

¹⁰⁴ The Chief Investigator will be able to require an operator of a railway to investigate, and report on, any railway accident or incident in relation to railway operations for which the person is responsible: proposed s 66.

¹⁰⁵ In determining the public interest, the court is to take into account the adverse impact that use of the information may have on future disclosures by operators of railways: proposed s 66A(4).

¹⁰⁶ Both the Chief Investigator and any Board of Inquiry may require a person to attend any place to answer questions and to produce documents or other things; and is to provide the Minister with a written report which must be tabled in each House of Parliament. The Minister, in consultation with the Waterways Authority, may direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report of the Chief Investigator or a Board of Inquiry. Failure to comply with a direction is an offence (maximum penalty \$110,000): proposed s 67A.

other Act or other law of the State [proposed s 109(3)], but does *not* permit the disclosure of confidential safety information [proposed s 109(5) and current s 65A].

Amendment of *Passenger Transport Act 1990*

15. The *Passenger Transport Act 1990* (PTA) is amended to standardise references to regulators in relation to buses and ferries. The role of **regulator** is to be carried out solely by the Director-General in relation to buses, and the Waterways Authority in relation to ferries.
16. The Bill provides for the investigation of, and inquiry into, transport accidents or incidents that may affect the safe provision of bus or ferry transport. As with the RSA, inquiries will now be conducted by the Chief Investigator, who may investigate any bus or ferry accident or incident [proposed s 46BA].¹⁰⁷
17. The Minister can *require* the Chief Investigator to investigate and report to the Minister on any transport accident or incident and may also constitute one or more persons as a Board of Inquiry to conduct an inquiry into any transport accident or incident (a *transport safety inquiry*) [proposed s 46BA(3)].¹⁰⁸
18. Conversely, the Chief Investigator may give a written notice to the Minister requesting an inquiry be conducted in relation to any transport accident or incident. After receiving such a request the Minister must either comply with the request or provide the Chief Investigator with written reasons for not doing so. The relevant documents must be tabled in each House of Parliament [proposed s 46BD].
19. The regulator may enter into an information sharing arrangement with other agencies to permit certain information to be exchanged between the regulator and that other agency [proposed s 53]. Any such information sharing arrangement has effect despite any other Act or other law of the State [proposed s 53(3)], but does *not* permit the disclosure of confidential safety information [proposed s 53(5) and current s 46E].

Issues Considered by the Committee

- | |
|---|
| <p>20. The Committee did not identify any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
|---|

The Committee makes no further comment on this Bill.

¹⁰⁷ Persons who carry on public passenger services by means of buses or ferries are required to report to the regulator or other prescribed person any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, affecting the public passenger service. Failure to do so is an offence (maximum penalty \$11,000): proposed s 46B.

¹⁰⁸ Both the Chief Investigator and any Board of Inquiry may require a person to attend any place to answer questions and to produce documents or other things; and is to provide the Minister with a written report which must be tabled in each House of Parliament. The Minister, in consultation with the Waterways Authority, may direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report of the Chief Investigator or a Board of Inquiry. Failure to comply with a direction is an offence (maximum penalty \$110,000).

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

19. ROAD TRANSPORT LEGISLATION (SPEED LIMITERS) AMENDMENT BILL 2004

Background

1. The Committee reported on the *Road Transport Legislation (Speed Limiters) Amendment Bill 2004* in *Legislation Review Digest No 1 of 2005*.
2. On 17 February 2005, the Committee wrote to the Minister for Roads (Minister) requesting advice on the reasons for commencing the Act by proclamation. On 14 March 2005, the Minister advised that Act is to commence by proclamation, late in 2005, because of 'the complexity involved in implementing [its] provisions'. In particular, the Minister noted that the Roads and Traffic Authority (RTA) needs to provide enforcement zones based on the gradients of major freight routes so that the police can enforce the Act and fine processing arrangements need to be made.
3. The Committee considered this correspondence, which was reported in *Legislation Review Digest No 4 of 2005*. On 1 April 2005, the Committee wrote a further letter to the Minister. His advice was sought as to what safeguards will exist to prevent persons being charged under s 69C(1) of the Act in circumstances where relevant information about the road gradient is not available to the police and would have resulted in the defence in s 69C(3)(b) of the Act being applied.

Minister's reply

4. The Minister advised the Committee by letter dated 23 May 2005 that:

The RTA is currently working with the NSW Police to provide maps and possibly road based markers to identify enforcement zones where the provisions of the Bill can be applied.

I'm further advised by the RTA that the NSW Police will develop operating protocols and undertake training of police officers in the use of the procedures to ensure that the Police only enforce the legislation at appropriate sites.

Committee's response

- | |
|--|
| 5. The Committee thanks the Minister for his reply. |
|--|

The Committee makes no further comment on this Bill.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 April 2005

Our Ref: LRC1097
Your Ref: M05/1435

The Hon Michael Costa MLC
Minister for Roads
Level 31, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Road Transport Legislation (Speed Limiters) Amendment Bill 2004

At its meeting today the Committee considered your letter of 14 March 2005 concerning the above Bill. The Committee thanks you for your reply.

As noted in both the Bill's second reading speech and your letter, the Bill provides a defence by recognising that the gradient of a length of road or road-related area may in certain circumstances affect the speed of a vehicle even if it is properly speed limited. You advised in your letter that in order to enable the NSW Police to enforce the speed limiter provisions, enforcement zones based on the gradients for major freight routes are to be provided by the Roads and Traffic Authority.

The Committee notes that there may be instances in which vehicles are not travelling on "major freight routes" where gradients are nonetheless such as to warrant the triggering of the relevant defence provisions. In these instances, the Committee is concerned that drivers and operators not be unfairly charged by police under proposed s 69C for lack of information about the road gradient.

The Committee therefore seeks your advice as to what safeguards will exist to prevent persons being charged under s 69C(1) in circumstances where relevant information about the road gradient would have resulted in the defence in s 69C(3)(b) being applied.

Yours sincerely

A handwritten signature in cursive script that reads 'Peter Primrose'.

Peter Primrose MLC
Chairman

Road Transport Legislation (Speed Limiters) Amendment Bill 2004



*Minister for Roads
Minister for Economic Reform
Minister for Ports
Minister for the Hunter*

M05/2857

Mr Peter Primrose MLC
Parliament of New South Wales
Chairman
Legislation Review Committee
Macquarie Street
SYDNEY NSW 2000



Dear Mr Primrose

Thank you for your letter regarding the commencement of the Road Transport Legislation (Speed Limiters) Amendment Bill 2004.

I'm advised that the Roads and Traffic Authority (RTA) is currently working with the NSW Police to provide maps and possibly road based markers to identify enforcement zones where the provisions of the Bill can be applied.

I'm further advised by the RTA that the NSW Police will develop operating protocols and undertake training of police officers in the use of the procedures to ensure that the Police only enforce the legislation at appropriate sites.

Yours sincerely

A handwritten signature in black ink that reads 'Michael Costa'.

MICHAEL COSTA

Level 31, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Tel 9228 5665 Fax 9228 5699

Part Two – Regulations

SECTION A: REGULATIONS ABOUT WHICH THE COMMITTEE IS SEEKING FURTHER INFORMATION

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Centennial Park and Moore Park Trust Regulation 2004	27/08/04	6699	05/11/04 29/04/05	21/04/05
Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005	08/04/05	1245	29/04/05	
Occupational Health and Safety Amendment (Transitional) Regulation 2004	17/12/04	9354	01/04/05 23/05/05	19/05/05
Protection of the Environment Operations (General) Amendment (Luna Park) Regulation 2005	11/03/05	698	29/04/05	
Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005	14/01/05	111	01/04/05	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Institute of Teachers Regulation 2005 <ul style="list-style-type: none">• Letter dated 01/04/2005 to the Minister for Education and Training• Letter dated 26/05/2005 from the Minister for Education and Training• Letter dated 03/06/2005 to the Minister for Education and Training	21/01/2005 page 183
Residential Tenancies (Residential Premises) Regulation 1995 <ul style="list-style-type: none">• Letter dated 03/06/05 to the Minister for Fair Trading• Letter dated 25/05/2005 from the Minister for Fair Trading• Letter dated 07/04/2004 from the Minister for Fair Trading• Letter dated 20/12/2002 from the Minister for Fair Trading	Postponement of automatic repeal

1. Institute of Teachers Regulation 2005



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 April 2005

Our Ref:LRC1148

The Hon Carmel Tebbutt MLC
Minister for Education & Training
Level 33, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Institute of Teachers Regulation 2005

The Committee considered the above Regulation at its meeting of 1 April 2005 and has resolved to write to you for advice in relation to the following matters.

The Committee notes that section 18 of the *Institute of Teachers Act* requires that the accreditation list that the Institute must keep, contains among other things, particulars that the Act or the regulations may prescribe as being required to be included on the accreditation list. Clause 4 of the Regulation prescribes such particulars, including whether an applicant for accreditation has a language background other than English or is Aboriginal or a Torres Strait Islander.

The Committee has been advised by the Institute of Teachers that it will use this information in the course of carrying out its functions under the Act, including gaining a complete picture of the demographics of the teaching service across NSW and to have information as to the numbers of teachers in the service who may be indigenous or come from a non-English speaking background. The Institute also advised the Committee that it is mandatory for applicants for accreditation to provide all the particulars set out in clause 4.

The Committee notes that whether a person comes from a non-English speaking background or whether they are Aboriginal or a Torres Strait Islander is irrelevant to determining their suitability for accreditation under the Act. The Committee also notes that it is usual for questions of this nature to be optional, especially when the purpose of collecting such information is statistical in nature.

The Committee is of the strong view that requiring the production of personal information for an application when that information is not reasonably necessary for that application is an undue trespass on a person's privacy.

The Committee is also of the view that it is important for the NSW teaching service to reflect the diversity of the State's school population and that, for this reason, it may be helpful to collect information about applicants' ethnic backgrounds. However, the Committee questions whether this is sufficient justification for the trespass on privacy rights that may result from requiring applicants for accreditation to provide such information.

The right to privacy in this regard is particularly important given both the possibility, although clearly not intended by the legislation, that such information could be used to discriminate against a person and the fear that disclosing the information could form the basis of discrimination.

In light of the Committee's concern about the privacy rights of applicants, the Committee:

- (i) seeks clarification from you as to whether applicants must provide particulars relating to their status as an Aboriginal person or Torres Strait Islander or as a person from a non-English speaking background; and
- (ii) if provision of such particulars is mandatory, seeks your advice as to the reasons for making it mandatory rather than voluntary for applicants for accreditation to state whether they have a language background other than English or whether they are Aboriginal or a Torres Strait Islander.

Yours sincerely



Peter Primrose MLC
Chairman

The Hon Carmel Tebbutt MLC
Minister for Education and Training



RECEIVED

30 MAY 2005

LEGISLATION REVIEW
COMMITTEE

Mr Peter Primrose MLC
Chairman
Parliament of New South Wales
Legislation Review Committee
Macquarie Street
SYDNEY NSW 2000

NSWIT 05/00079

Dear Mr Primrose

I refer to your letter dated 1 April 2005 (ref: LRC1148) concerning the *Institute of Teachers Regulation 2005*.

The collection of such information was intended to support the role of the Institute in advising me on matters concerning provision of a quality teaching workforce. There was no intention that this information would influence any decision made regarding a candidate's suitability for accreditation.

I accept your concerns about the potential breach of privacy. I have instructed the Institute to amend application forms to state clearly that the provision of information regarding Language Background other than English and Aboriginal or Torres Strait Islander status is voluntary.

Yours sincerely

Handwritten signature of Carmel Tebbutt in cursive script.

Carmel Tebbutt MLC
MINISTER FOR EDUCATION AND TRAINING

26 MAY 2005



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

3 June 2005

Our Ref:LRC1148

The Hon Carmel Tebbutt MLC
Minister for Education & Training
Level 33, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Institute of Teachers Regulation 2005

Thank you for your reply of 26 May 2005 to the Committee's letter of 1 April 2005 concerning the above regulation.

The Committee welcomes your amendment of the accreditation application forms used by the Institute to state clearly that the provision of information regarding an applicant's language background other than English and an applicant's Aboriginal or Torres Strait Islander status is voluntary.

Yours sincerely

A handwritten signature in black ink that reads 'Peter Primrose'.

Peter Primrose MLC
Chairman

2. Residential Tenancies (Residential Premises) Regulation 1995

Issue

1. By letter dated 25 May 2005 (attached), the Minister for Fair Trading (Minister) advised the Committee of his intention to postpone the automatic repeal of the *Residential Tenancies (Residential Premises) Regulation 1995* for the sixth occasion.
2. Since this Regulation has been postponed for the maximum number of times permitted under s 11(3) of the *Subordinate Legislation Act 1989* (the Act), the Minister is proposing Statute Law Revision amendments to s 10 of that Act to postpone the Regulation's repeal until 1 September 2006.

Comment

Minister's letter

3. The Minister has advised of his intention to postpone the automatic repeal of the Regulation until 1 September 1996 in order that a review of residential tenancy laws may be completed and legislative amendments may be introduced during the Spring 2005 session of Parliament.
4. The Minister's letter states that the Regulation 'contains clauses which are vital to the ongoing operation of the rental market'. He further notes that 'it is not considered possible or practicable to attempt to remake the Regulation while a major review of the Act under which the Regulation is made is being conducted'. He advises that the Office of Fair Trading is awaiting approval from the Premier for the release of an 'options paper' for public consultation.
5. He advises that '[g]iven the timeframe provided for the review process, a new Regulation would be in place by 1 September 2006'.
6. The Minister's letter acknowledges that the automatic repeal of the Regulation has been postponed for the maximum number of times, but that 'there are a number of precedents' where a regulation's operation has been further prolonged by an amendment to s 10 of the Act.
7. The Minister specifically seeks the Committee's concurrence to amend s 10.

Staged Repeal of Subordinate Legislation Program and the Committee's role

8. Under s 11(3) of the Act, the repeal of a regulation may not be postponed on more than five occasions, with the idea that it should be repealed or re-made by the fifth anniversary of the date of its publication in the *Gazette*.
9. The Committee's statutory function only triggers in relation to Ministerial proposals to postpone the repeal of regulations for the third, fourth or fifth time. Under s 11(5) of the *Subordinate Legislation Act 1989*, the Committee may report to the responsible Minister or to Parliament 'as it thinks desirable in connection with the third, fourth or fifth postponement of the repeal' of a particular regulation.

10. Whilst the Minister's letter has the appearance of a notification of a postponement under s 11, it is not a postponement under that section but a legislative proposal. Consequently, the Minister has no obligation to give notice to the Committee, nor does the Committee have any explicit function to consider such a notice.
11. The Committee nevertheless considers the letter to be in accordance with the spirit of the *Subordinate Legislation Act 1989*.
12. The Committee has previously commented in relation to a similar legislative proposal to extend the operation of the *Seeds Regulation 1994* under the *Noxious Weeds Act 1993* by amending s 10 of the Act.¹⁰⁹ In that instance, the Committee had noted with concern that no adequate explanation of the delay in conducting the legislative review had been given, so as to justify why the regulation had not been re-made. Nonetheless, it noted that the Minister's legislative proposal appeared reasonable. Section 10 of the Act was subsequently amended.¹¹⁰

History of delay requiring sixth postponement of repeal

13. The Minister first wrote to the Committee on 18 October 2002 to advise of the proposed postponement of the repeal of the Regulation for the third time. In that letter, the Committee was advised that the report on the National Competition Policy review of the residential tenancies legislation was finalised and would not be considered by Parliament until Spring 2002/Budget 2003.
14. The Committee wrote on 25 November 2002 to the Minister seeking advice on the actual date when the report was finalised, the length of time it had been under consideration and why it had taken so long to implement legislative reforms. The Ministerial response dated 20 December 2002 (attached) noted that the report was completed in 2000 and had been under Ministerial consideration since that time. It was stated that it would be 'unlikely that the anticipated legislative reforms... will be fully implemented before 1 September 2003' owing to the need for further consultation with stakeholders.¹¹¹
15. The fourth and fifth (attached) requests for the postponed repeal of the Regulation were sought on essentially the same basis.

Conclusion

16. The Committee thanks the Minister for the courtesy of seeking the Committee's concurrence in the proposal to amend s 10 of the *Subordinate Legislation Act 1989* to postpone the repeal of the Regulation until 1 September 2006.
17. The Committee has informed the Minister that, in the circumstances, it considers such amendment to be appropriate (letter attached).

¹⁰⁹ Considered by the Committee on 28 May 2004.

¹¹⁰ Consequently, s 10(3) of the Act currently provides that '[d]espite the other provisions of this Part, the *Seeds Regulation 1994* remains in force until 1 September 2005, unless sooner repealed'

¹¹¹ Considered by the Committee on 14 November 2002.

18. The Committee notes, however, that the report on the Competition Policy Review of the residential tenancies legislation was completed in 2000 and is concerned that a review of the NSW residential tenancy laws has not been completed since that time.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

3 June 2005

Our Ref: LRC689

The Hon John Hatzistergos MLC
Minister for Fair Trading
Level 25, 59-61 Goulburn Street
SYDNEY NSW 2000

Dear Minister

Residential Tenancies (Residential Premises) Regulation 1995

Thank you for the courtesy of notifying the Committee of your intention to amend s 10 of the *Subordinate Legislation Act 1989* to postpone the automatic repeal of the above Regulation until 1 September 1996.

The Committee notes that this course of action appears appropriate, in the circumstances.

The Committee notes with concern, however, that the report on the Competition Policy Review of the residential tenancies legislation was completed in 2000 and that a review of the NSW tenancy laws has not been completed since that time.

Yours sincerely,

A handwritten signature in black ink that reads 'Peter Primrose'.

Peter Primrose MLC
Chairman

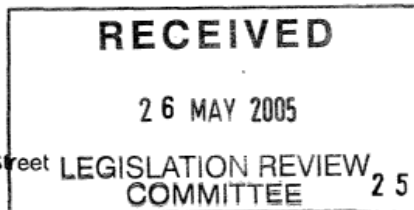


New South Wales

Minister for Justice
Minister for Fair Trading
Minister Assisting the Minister for Commerce
Minister Assisting the Premier on Citizenship

IDFT: M05/1423
File No: 02/19590

The Hon Peter Primrose MLC
Chairperson
Legislation Review Committee
Parliament House, Macquarie Street
SYDNEY NSW 2000



Dear Mr Primrose

I am proposing to conduct a review of the NSW residential tenancy laws. An Options Paper has been drafted by the Office of Fair Trading in order to facilitate the review and approval has been sought from the Premier to release the paper for public consultation. It is proposed that any legislative amendments that may arise as a result of the review process will be tabled in Parliament for the 2005 Spring Session. Consequently it is anticipated that an amended Act and any associated regulations would be commenced in 2006.

The *Residential Tenancies (Residential Premises) Regulation 1995* is due for automatic repeal on 1 September 2005, in accordance with the provisions of the *Subordinate Legislation Act*. The repeal of the Regulation has been postponed for the maximum allowable number of times. However it is not considered possible or practicable to attempt to remake the Regulation while a major review of the Act under which the Regulation is made is being conducted. The Regulation does however, contain clauses which are vital to the ongoing operation of the rental market. Therefore, I am seeking your concurrence to amend section 10 of the *Subordinate Legislation Act* in order to prolong the life of the Regulation for up to another year. Given the timeframe provided for the review process a new Regulation would be in place by 1 September 2006. There are a number of precedents for this approach involving other Regulations, all of which have been prolonged via an amendment to the *Subordinate Legislation Act* enacted through the statute law revision program. Accordingly I have also written to the Premier seeking his concurrence for the inclusion of the necessary amendment in the Statute Law Miscellaneous Provisions Bill 2005.

Should your officers require any further information on this matter, Mr Adam Heydon of the Office of Fair Trading can be contacted on 9338 8963.

Yours sincerely

(J. Hatzistergos)

All correspondence to: GPO Box 5341, Sydney NSW 2001
Telephone (02) 9995 6300 Facsimile (02) 9995 6670
Email: minjust@hatzistergos.minister.nsw.gov.au



Minister for Fair Trading
Minister Assisting the Minister for Commerce

IDFT 04/792
File No. 02/46473

Mr B J Collier MP
Chair
Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

RECEIVED

- 7 APR 2004

LEGISLATION REVIEW
COMMITTEE

Dear Mr Collier

In accordance with section 11(4) of the *Subordinate Legislation Act 1989* I am writing to advise the Committee that I have written to the Premier seeking a further postponement of the automatic repeal of the Residential Tenancies (Residential Premises) Regulation 1995 and the Strata Schemes Management Regulation 1997.

The postponement of the Residential Tenancies Regulation is required because a more thorough review on residential tenancies law is being considered.

The *Strata Schemes Management Amendment Act 2004* received assent on 17 March 2004. The Act provides for a number of new regulation making powers. New regulations will accordingly need to be developed and a Regulatory Impact Statement prepared prior to the commencement of the amendments. This process will not be completed by 1 September 2004.

Yours sincerely

Reba Meagher MP
Minister

- 5 APR 2004

Level 37, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Phone: 02 9228 3555
Fax: 02 9228 3585
Email: rmeagher@meagher.minister.nsw.gov.au

Text of letter from the (then) Minister for Fair Trading dated 20 December 2002

RML MO2/4471

Mr G Martin MP
Chairman

Dear Mr Martin

I refer to your letter concerning the proposed postponement of the automatic repeal of the Landlord and Tenant Regulation 1994 and the Residential Tenancies (Residential Premises) Regulation 1995.

The following advice is provided in response to the matters raised by the Regulation Review Committee.

The Steering Committee for the National Competition Policy Review of NSW Residential Tenancies Legislation completed its final report in 2000. The report was under consideration by my predecessor, the Hon J A Watkins, MP, prior to the re-allocation of Ministerial portfolios in 2001. In 2002 the report was re-submitted to me together with a Cabinet proposal concerning a Government response to the report's recommendations for legislative, policy or administrative action. Given the wide ranging nature of the review and the diversity of the views expressed, further consultation is required before a firm legislative amendment can be made.

The Fair Trading portfolio has had carriage of major legislative reforms during 2002, particularly with respect to the Property, Stock and Business Agents Act 2002 and the changes resulting from the report of the Joint Select Committee into the Quality of Buildings in NSW. As a consequence, it is unlikely that the anticipated legislative reforms with regard to residential tenancies law will be fully implemented before September 1, 2003.

Yours sincerely

John Aquilina MP

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Appropriation Bill 2005	7
Appropriation (Budget Variations) Bill 2005	6
Appropriation (Parliament) Bill 2005	7
Appropriation (Special Offices) Bill 2005	7
Brigalow and Nandewar Community Conservation Area Bill 2005	7
Building Professionals Bill 2005	7
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2, 3
Civil Procedure Bill 2005	5
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	3
Coal Acquisition Amendment (Fair Compensation) Bill 2005	5
Courts Legislation Amendment Bill 2005	7
Court Security Bill 2005	2
Crimes Amendment (Grievous Bodily Harm) Bill 2005	3
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	6
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	3
Criminal Assets Recovery Amendment Bill 2005	7
Criminal Procedure Amendment (Evidence) Bill 2005	3
Criminal Procedure Further Amendment (Evidence) Bill 2005	4
Crown Lands Amendment (Access to Property) Bill 2005*	4
Crown Lands Legislation Amendment Bill 2005	7
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005	6
Electricity Supply Amendment Bill 2005	2, 5
Energy Administration Amendment (Water and Energy Savings) Bill 2005	5
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	7
Fair Trading Amendment (Responsible Credit) Bill 2005*	6
Fire Brigades Amendment (Community Fire Units) Bill 2005	7
Fiscal Responsibility Bill 2005	7
Fisheries Management Amendment (Catch History) Bill 2005*	6
Gambling (Two-up) Amendment Bill 2005	7

	Digest Number
Game and Feral Animal Control Amendment Bill 2005	5
Independent Commission Against Corruption Amendment Bill 2005	2, 3
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
Legal Profession Bill 2004	1, 5
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
National Park Estate (Reservations) Bill 2005	7
National Parks and Wildlife (Adjustment of Areas) Bill 2005	3
Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005	7
Petroleum (Submerged Lands) Amendment (Permits and Leases) Bill 2005	7
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005	7
Prisoners (Interstate Transfer) Amendment Bill 2005	4, 5
Protection of Agricultural Production (Right to Farm) Bill 2005*	4
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4, 7
Rural Workers Accommodation Amendment Bill 2005	7
Sheriff Bill 2005	2
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
State Revenue Legislation Amendment (Budget Measures) Bill 2005	7
Surveying Amendment Bill 2005	7
Sydney 2009 World Masters Games Organising Committee Bill 2005	7
Sydney University Settlement Incorporation Amendment Bill 2005*	7
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill 2005	7
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3
Workplace Surveillance Bill 2005	6

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Building Professionals Bill 2005	Minister for Infrastructure and Planning (Planning Administration)	03/06/05			7
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04		6	
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05	08/03/05		2, 3, 5
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05			6
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05	30/03/05		2, 5
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	Minister for Infrastructure and Planning	03/06/05			7
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05	02/03/05		2, 3
Legal Profession Bill 2004	Attorney General	17/02/05	07/04/05		1, 5
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Photo Card Bill 2004	Minister for Roads	17/02/05			1
Prisoners (Interstate Transfer) Amendment Bill 2005	Minister for Justice	01/04/05	18/04/05		4, 5
Road Transport (General) Bill 2004	Minister for Roads	17/02/05	14/03/05		1, 4
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1, 5
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05 01/04/05	14/03/05 23/05/05		1, 4, 7
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2005

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Building Professionals Bill 2005	N, C				
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N,C				
Civil Procedure Bill 2005	N			N	
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	R				
Court Security Bill 2005				N	
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	R, C		R		
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	R				
Criminal Assets Recovery Amendment Bill 2005	R				
Criminal Procedure Amendment (Evidence) Bill 2005	N				
Criminal Procedure Further Amendment (Evidence) Bill 2005	C			N	
Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005				N	
Electricity Supply Amendment Bill 2005				C	
Energy Administration Amendment (Water and Energy Savings) Bill 2005				R, N	
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill 2005	N, R	C	N, C		R, C
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Legal Profession Bill 2004	N,C			N	
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
National Parks and Wildlife (Adjustment of Areas) Bill 2005				N	
Photo Card Bill 2004				C	
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				
Prisoners (Interstate Transfer) Amendment Bill 2005				C	
Protection of Agricultural Production (Right to Farm) Bill 2005*	R				
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	
Rural Workers Accommodation Amendment Bill 2005	R				
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	R, N				
State Revenue Legislation Amendment (Budget Measures) Bill 2005	N				
Surveying Amendment Bill 2005	N				
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	N			N	N

Key

- R Issue referred to Parliament
C Correspondence with Minister/Member
N Issue Noted

Appendix 4: Index of correspondence on regulations reported on in 2005

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2005
Architects Regulation 2004	Minister for Commerce	21/09/04	30/11/04	1
Centennial and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	05/11/04 29/04/05	21/04/05	5
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	Minister for Infrastructure and Planning	26/10/04 17/02/05	01/02/05	1
Forestry Regulation 2004	Minister for Primary Industries	26/10/04 17/02/05	18/01/05	1
Institute of Teachers Regulation	Minister for Education and Training	01/04/05 03/06/05	26/05/05	7
Occupational Health and Safety Amendment (Transitional) Regulation 2004	Minister for Commerce	01/04/05 23/05/05	17/05/05	6
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	Minister for Transport Services	30/04/04 01/03/05	17/02/05	2
Stock Diseases (General) Regulation 2004	Minister for Primary Industries	05/11/04	16/12/04	1
Sydney Olympic Park Amendment Regulation 2004	Minister for Sport and Recreation	05/11/04	03/12/04	1