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Legislation Review Committee

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No 2 of 2007

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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 2007

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 2007

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 2007

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 2007

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. Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*

Privacy: Clause 3 Amendment of *Administrative Decisions Tribunal Act 1997* The Act is amended by omitting section 75 (2)(d).

14. In light of balancing the interests of the affected party to challenge the confidential evidence or contents of the confidential document and the public interest, safety and privacy issues associated with a person giving or providing such confidential evidence, the Committee has concerns with regard to the Tribunal losing jurisdiction and the general power with respect to the making of such an order under the current s 75 (2)(d), especially in contexts other than for firearms or security industry licensing, such as, in matters dealing with child protection or victims of sexual assault or domestic violence.
15. The Committee also notes that other comparable judicial bodies including the District Court and the Supreme Court of NSW have such general powers to make suppression orders. However, the need for transparency in the decision making and giving of reasons with regard to the use of confidential information is a valid concern. In the context of the firearm and security industry licensing, the Committee considers that the relevant sections of the *Firearms Act 1996* and the *Security Industry Act 1997* might be more appropriate legislation for the consideration of any future amendments rather than the removal of a judicial body's general power to make suppression orders.
16. The Committee is of the view that the personal rights of any witness or person providing such confidential evidence subject to the particular circumstances, deserve to be protected. This may outweigh the personal rights of the affected person to challenge the confidential evidence or confidential contents that may identify the witness or provider of that evidence made under the restricted or prohibited order. It is a matter for the Tribunal, a judicial body, to determine whether an order prohibiting or restricting the disclosure should be made or not.
17. The Committee asks Parliament to consider whether the proposed amendment may unduly trespass personal rights, privacy and safety, by making the Tribunal lose the power to make orders prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal in relation to the proceedings.

2. Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007

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

3. Biofuel (Ethanol Content) Bill 2007

Issue: Strict liability – Clauses 9 and 10

- 19. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement on the prosecution to prove that the defendant intended to commit the offence.**
- 20. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.**
- 21. The Committee concludes that, given the inclusion of defences and limiting the penalties that may be imposed to monetary ones only, personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.**

Issue: Power of entry into premises – clause 16

- 30. The power to enter premises may trespass on the right to privacy. The Committee acknowledges that there are some limitations on the power of entry given to investigators. The Committee refers to Parliament whether the power of entry unduly trespasses on the right to privacy.**

Issue: Denial of compensation - clause 22

- 32. Whilst the Bill excludes the State from any liability or payment of compensation in relation to certain matters, the Committee acknowledges that there is a public interest in the State being able to regulate the ethanol content of petrol sales without the constraints of potential litigation.**
- 33. The Committee has concerns about the denial of compensation and asks Parliament to consider the question of whether the exclusion of liability unduly trespasses on personal rights and liberties.**

Issue: Commencement by proclamation

- 35. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement by proclamation rather than on assent is an inappropriate delegation of legislative power.**

4. Brothels Legislation Amendment Bill 2007

Procedural Fairness: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2) Natural justice requirements not applicable. (A person who gives a brothel closure order is not required to comply with sections 121G – 121K. Note: Sections 121G – 121K provide, among other things, for the notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given and information about appeal rights).

15. The Committee has concerns with regard to the proposed Schedule 1 [2] to insert the proposed section 121ZR (2), and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give notice and to hear representations concerning the making of a brothel closure order.

Fair Trial: Proposed Schedule 1 [3] to insert section 124AB (5) (a) and (b) Finding may be made on circumstantial evidence.

17. The Committee has concerns with regard to the proposed provisions and asks Parliament to consider whether the above proposed provisions on accepting a finding based on circumstantial evidence may be unfair to the affected person if it is also not balanced by amendments to include a right to be heard and to make representations at the time of the making of a brothel disclosure order.

Right to Housing: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2) Natural justice requirements not applicable.

20. The Committee asks Parliament to consider whether that the proposed Schedule 1 [2] to insert section 121ZR (2) and remove the applicability of the current section 121G on satisfactory accommodation, may trespass unduly on personal rights and liberties.

23. The Committee asks Parliament to consider whether that it is an undue trespass to personal rights and liberties when there is a denial of compensation for innocent persons who suffer damage as a result of making the cessation of utilities order for the enforcement of a brothel closure order, including any successful appeals against the brothel disclosure order.

Exclude judicial review: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZS Enforcement of brothel closure orders by cessation of utilities.

25. The Committee asks Parliament to consider whether the lack of appeal rights and procedure for utilities orders may be an undue trespass to personal rights and liberties.

Clauses which allow amendment of Acts by a regulation: Proposed Schedule 1 [2] to insert proposed section 121ZR (8) (a), (b), (c), (d) with regard to appeals. (Regulations may be made for or with respect to the following: (a) conferral of jurisdiction on Local Courts

Summary of Conclusions

with respect to appeals against brothel closure orders; (be) removing the right to appeal under section 121 ZK if an appeal is made to a Local Court under the regulations; (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of a Local Court on appeals; (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to above).

28. The Committee asks Parliament to consider whether the above proposed schedule to amend the Acts by regulation is an inappropriate delegation of legislative power, and that it may also be an inappropriate delegation of legislative power to oust the jurisdiction of the courts as judicial review is vital for protecting individual rights against oppressive administrative action and in the upholding of the rule of law.

5. Children (Criminal Proceedings) Amendment (Publication Of Names) Bill 2007

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

6. Climate Futures Bill 2007*

Issue: Clauses 5(3) and 6: Revocation of planning approval

11. The Committee notes that passage of the Bill may adversely affect those who have obtained planning approval in relation to the Anvil Hill coal mine and the Kooragang Coal Terminal and its coal export transport terminal.

12. Accordingly, the Committee asks Parliament to consider whether the revocation of planning approval in accordance with clause 6 of the Bill unduly trespasses on rights and liberties.

7. Constitution Amendment (Speaker) Bill 2007

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

8. Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007

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

9. Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007

Issue: Procedural fairness

15. The Committee acknowledges that the Bill is designed to reduce the administrative burden on the police and subsequently free them for frontline policing. However, the need for improved efficiency does not justify interference with procedural fairness.
16. The Committee also notes concerns, such as those voiced by the Law Society of NSW, that the amendments would increase the number of not guilty pleas. This would add to the workload of the court and may not result in a decrease in the number of briefs of evidence required. This would diminish any efficiency benefits that might otherwise be gained.
17. Accordingly, the Committee concludes that the rights and liberties of the defendant are unduly trespassed.

Issue: Commencement by proclamation

19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

10. Educational Support for Dyslexic Children Bill 2007*

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

11. Electricity Supply Amendment (Offences) Bill 2007

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

12. Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007

Issue: No default maximum of compulsory contributions: proposed s 34J

11. The Committee considers that it is appropriate to vary any maximum compulsory contribution level by regulation as any such variation would be disallowable by Parliament. However, the lack of a default maximum level that applies if no maximum level is prescribed by regulation delegates to the Government the power to determine whether or not there should be a maximum at all.
12. The Committee is concerned that the failure to provide a default maximum level of compulsory contributions payable into the Climate Change Fund may be an inappropriate delegation of legislative power.

13. Government Publicity Control Bill 2007*

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

14. Government Schools (Infrastructure Register) Bill 2007*

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

15. Motor Dealers Amendment Bill 2007

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

16. National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007

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

17. Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*

Issue: Strict liability – Schedule 1

11. The Committee concludes that given that s 151AA includes a defence, imposes a monetary penalty only, and is designed to protect the public interest in upholding the integrity of the electoral process in NSW, the imposition of strict liability does not unduly trespass on personal rights and liberties.

18. Protection of the Environment Operations Amendment (Waste) Bill 2007

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

19. Renewable Energy (New South Wales) Bill 2007

Issue: Strict liability – clauses 38, 86, 105, 108 and 114

28. The Committee recognises that the proposed scheme is to be market-based. Given the strong public interest in ensuring that certificates are only created by those entitled to do so, that individuals and entities comply with the terms of the scheme and not acquire an unfair advantage, and that the maximum penalties applicable do not involve a term of imprisonment, the Committee considers that the imposition of strict liability does not unduly trespass on personal rights and liberties.

Issue: Powers of authorised officers

33. The Committee recognises the public interest in ensuring compliance with the Bill. Given that the power to enter premises to exercise various monitoring powers is balanced by a requirement that such entry be at a reasonable time, is to cause as little inconvenience as possible, must be by consent in the case of business premises or else by warrant, and that only persons with the appropriate skills, qualifications and experience may be appointed authorised officers, the Committee does not consider that the rights to privacy and enjoyment of property are unduly trespassed.

Issue: Retrospectivity – Schedule 3

35. The Committee concludes that the potential for retrospective application of regulations made in accordance with Schedule 3 does not unduly trespass on personal rights and liberties.

Issue: Commencement

37. The Committee concludes that the Bill does not inappropriately delegate legislative powers by providing that it is to commence following proclamation rather than on assent as it specifies that the latest date for commencement is 1 January 2008.

20. Royal Rehabilitation Centre Sydney Site Protection Bill 2007*

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

21. Security Industry Amendment (Patron Protection) Bill 2007***Issue: Privacy – Schedule 1[5]**

18. The Committee notes the importance of protecting a person's right to privacy. It acknowledges that drug and alcohol testing can involve invasive procedures. The Committee further notes that random drug and alcohol testing is particularly invasive.
19. However, there may be situations when the need to protect the safety of others justifies such an invasion. There is a public interest in ensuring that crowd and venue controllers and bouncers are not under the influence of drugs or alcohol whilst working.
20. The Committee notes that the procedures involved in the testing of, and collection of samples from, crowd and venue controllers and bouncers are provided for in the Bill. Only police officers are authorised to require such tests.
21. It also notes that drug and alcohol testing of workers in some other industries already occurs.

22. The Committee thus concludes that individual rights and liberties are not unduly trespassed.

22. Standard Time Amendment (Daylight Saving) Bill 2007

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

23. Superannuation Legislation Amendment Bill 2007

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

24. Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*

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

25. University of Technology (Kuring-gai Campus) Bill 2007*

Issue: Acquisition of land not on just terms – Clause 6

9. The Committee is concerned that the right to, and interests in, property are inadequately safeguarded by the Bill. It is uncertain whether the circumstances justify exclusion of the *Land Acquisition (Just Terms Compensation) Act 1991*. Accordingly, the Committee is concerned that the Bill may trespass unduly on personal rights and liberties.

10. The Committee asks Parliament to consider whether the personal rights and liberties are unduly trespassed by the Bill as it allows the compulsory acquisition of land and interests in the land without compensation.

Issue: Commencement – Clause 2

12. The Committee asks Parliament to consider whether providing that the Bill commence on proclamation rather than on assent is an appropriate delegation of legislative power.

SECTION B: Ministerial Correspondence — Bills Previously Considered

26. Statute Law (Miscellaneous Provisions) Bill 2007

4. The Committee thanks the Premier for his reply.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. ADMINISTRATIVE DECISIONS TRIBUNAL AMENDMENT (CONFIDENTIAL DOCUMENTS) BILL 2007*

Date Introduced:	21 June 2007
House Introduced:	Legislative Council
Minister Responsible:	Private Member – The Hon Robert Brown, MLC; Member of the Shooters Party;
Portfolio:	Private Member

Purpose and Description

1. This Bill amends the *Administrative Decisions Tribunal Act 1997* to enable the legal representative of any party to proceedings heard by the Administrative Decisions Tribunal to see and challenge otherwise confidential documentary evidence.

Background

2. This Bill is introduced by the Shooters Party to enable the legal representative of any party to proceedings heard by the Administrative Decisions Tribunal to see and challenge otherwise confidential evidence. However, the Tribunal will continue to be able to make orders restricting the disclosure to anyone other than a party to the proceedings.
3. Generally, hearings before the Administrative Decisions Tribunal are held in public. Under section 75 (2)(d) of the *Administrative Decisions Tribunal Act 1997*, the Tribunal may make an order prohibiting or restricting the disclosure of the contents of a document received in evidence, to some or all of the parties to the proceedings.
4. Two recent cases appealed unsuccessfully to the Administrative Decisions Tribunal as the Tribunal applied s 75 (2)(d) to restrict or prohibit the disclosure to the party of the confidential evidence given before the Tribunal. The Tribunal affirmed the decision to revoke the firearms licence in the decision of *Aubrey v Commissioner of Police* [2005] NSWADT 266 (20 November 2005) on the ground that it would not be in the public interest to do so, and the Tribunal affirmed the decision to refuse a security industry licence in *Khalil v Commissioner of Police* [2007] NSWADT 81 (11 April 2007), on the grounds that the person is not found to be a fit and proper person and that it would not be in the public interest.
5. In the *Aubrey* decision, a member of the public provided a confidential affidavit of evidence of dealings with Aubrey. That person stated that they feared for their safety

as a result of dealings with Aubrey, and a hearing was conducted in the absence of Aubrey and his legal representative. Other information before the Tribunal, which was not held in confidence included the incident in 2003, when a 16 year old girl met Mr Aubrey through the Internet, who reported to police that he had told her that he was going to shoot himself but Aubrey denied that he had made that threat. In 2004, Mr Aubrey met another girl through the Internet. The girl was 14 years old and she provided different versions to Aubrey's account regarding what had happened. In 2005, Centrelink staff advised police that Aubrey had an extensive history of threatening staff by telephone.

6. It is argued that there is no mechanism to challenge the confidential evidence, which is against the principle of natural justice.
7. The President of the Administrative Decisions Tribunal (ADT) advises that the Tribunal opposes the losing of the general powers of a judicial body to make such orders as there are other contexts in which such powers are necessary such as for child protection matters or to protect evidence identifying victims in sexual assault or domestic violence contexts.
8. The President of the ADT also advises that section 75 (2)(d) enables a suppression order to be made, which is comparable to the powers to make suppression orders that reside with the District and Supreme Court of NSW. This general power should not be removed from a judicial body.
9. However, the President of the ADT acknowledges the concerns to which the Bill is directed, that is, the desirability for transparency in decision making and the desirability of giving an individual an opportunity to reply to information that has been used adversely to that individual. On the other hand, there may be circumstances where in the public interest, information should be suppressed either from general publication or, in extreme cases, denied to the individual adversely affected by it. The power given by section 75 must be exercised by the ADT according to rational, judicial standards and any decision is appealable. The President expressed concern over a provision which has recently come into force and goes to the matter raised by the Bill. This provision may have the effect of forcing the ADT to suppress information when that is manifestly unfair or unnecessary and not in the public interest. The provision is the *Security Industry Act 1997*, section 29(3)(b) preventing the ADT from disclosing to the affected individual or in its published reasons any report, criminal information or intelligence unless the Commissioner of Police gives approval. The President notes that this Committee criticised this provision in a report to Parliament in 2005. This provision subverts the role of the ADT as it leaves the ADT in a situation where it might engage in unreasoned decision-making, gives control over disclosure of information to a partisan (the Commissioner). It has the potential to undermine gravely the standing of the ADT as an independent, judicial institution.

The Bill

10. The object of this Bill is to remove the power of the Administrative Decisions Tribunal to restrict or prohibit disclosure to a party to proceedings in the Tribunal of evidence or documents before the Tribunal in the proceedings.
11. It proposes to omit section 75 (2)(d) of the *Administrative Decisions Tribunal Act 1997*: an order prohibiting or restricting the disclosure to some or all of the parties to

the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

Issues Considered by the Committee

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

Privacy: Clause 3 Amendment of *Administrative Decisions Tribunal Act 1997* The Act is amended by omitting section 75 (2)(d).

12. The Committee is of the view that the principle of natural justice and the ability to challenge evidence are important and significant, and should not be undermined unless there are compelling public interest and safety reasons.
13. The Committee notes that it is a high standard that applies to the granting of a licence (in firearms or in security industry), and that the Tribunal errs on the side of caution. It considers the object of the section of the current Act, which is to protect the interests and privacy of the confidential nature of any evidence, which is also consistent with an order under s 75 (2)(d) prohibiting or restricting: (i) the disclosure of the name, address, picture or any other material that identifies, or may lead to the identification of, any person (whether or not a party to proceedings before the Tribunal or a witness summoned by, or appearing before, the Tribunal), or (ii) the doing of any other thing that identifies, or may lead to the identification of, any such person; in order to protect the identification (and safety) of such a person giving evidence.
14. **In light of balancing the interests of the affected party to challenge the confidential evidence or contents of the confidential document and the public interest, safety and privacy issues associated with a person giving or providing such confidential evidence, the Committee has concerns with regard to the Tribunal losing jurisdiction and the general power with respect to the making of such an order under the current s 75 (2)(d), especially in contexts other than for firearms or security industry licensing, such as, in matters dealing with child protection or victims of sexual assault or domestic violence.**
15. **The Committee also notes that other comparable judicial bodies including the District Court and the Supreme Court of NSW have such general powers to make suppression orders. However, the need for transparency in the decision making and giving of reasons with regard to the use of confidential information is a valid concern. In the context of the firearm and security industry licensing, the Committee considers that the relevant sections of the *Firearms Act 1996* and the *Security Industry Act 1997* might be more appropriate legislation for the consideration of any future amendments rather than the removal of a judicial body's general power to make suppression orders.**

- 16. The Committee is of the view that the personal rights of any witness or person providing such confidential evidence subject to the particular circumstances, deserve to be protected. This may outweigh the personal rights of the affected person to challenge the confidential evidence or confidential contents that may identify the witness or provider of that evidence made under the restricted or prohibited order. It is a matter for the Tribunal, a judicial body, to determine whether an order prohibiting or restricting the disclosure should be made or not.**
- 17. The Committee asks Parliament to consider whether the proposed amendment may unduly trespass personal rights, privacy and safety, by making the Tribunal lose the power to make orders prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal in relation to the proceedings.**

The Committee makes no further comment on this Bill.

2. ASSOCIATIONS INCORPORATION AMENDMENT (CANCELLATION OF INCORPORATION) BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Linda Burney MP
Portfolio:	Fair Trading

Purpose and Description

1. The purpose of the Bill is to amend the *Associations Incorporation Act 1984* to facilitate the cancellation of the incorporation of incorporated associations that have become defunct.

Background

2. As noted in the Agreement in Principle speech, the *Associations Incorporation Act 1984* provides 'small non-profit community-based groups with a simple and inexpensive means of creating a legal entity separate from the individual members' and thus gives members of an association the protection of limited liability.¹
3. A review of the *Associations Incorporation Act 1984* identified a number of associations that are still registered despite no longer being in operation. The Bill was subsequently introduced to address concerns raised in the review and to implement a number of technical and administrative amendments to streamline the process for cancellation of incorporation. The Council of Social Service of NSW, NSW Sport and Recreation, the Ethnic Communities Council of NSW, the Community Relations Commission for a Multicultural NSW, National Disability Services NSW, NSW Office for Women, NSW Department of Premier and Cabinet, NSW Department of Community Services, the Office of the Registrar of Aboriginal Corporations, the Aged and Community Services Association of NSW, and the Local Community Services Association were directly consulted on the final draft of the Bill.

The Bill

4. Proposed s 54 empowers the Director General to cancel the incorporation of an incorporated association if satisfied that:
 - (a) the association is not in operation;
 - (b) the association is or has been engaged in trading or securing pecuniary gain for its members;

¹ L J Burney MP, Legislative Assembly *Hansard*, 27 June 2007.

- (c) the association is or has been, as trustee, engaged in trading or securing pecuniary gain for members of the association;
- (d) the association was incorporated by reason of fraud or mistake;
- (e) none of the required annual general meetings have been convened by the association in the previous three years;
- (f) none of the required statements have been lodged in the previous three years;
- (g) the association has failed to apply for approval to change its name in accordance with a direction referred to in s 14(1A) of the Act;
- (h) the association does not have at least five members; or
- (i) the association does not have a public officer who is resident in the State.

Grounds (a) to (e) currently apply. Grounds (f) to (i) are additional grounds inserted by the Bill.

5. Incorporation is not to be cancelled if the association is in the course of being wound up or if the Local Court has ordered the Director General not to cancel the incorporation on the application of any person with an interest in the matter.
6. The Director General is required to take a number of steps before cancelling an association's incorporation. He or she must: give notice of the proposed cancellation to the association stating the ground/s; provide the association and its members at least 28 days to make submissions regarding the proposed cancellation; and give due consideration to any submissions made.
7. Proposed s 54A provides that any liability of any officer or member of a previously incorporated association continues and may be enforced as though the incorporation had not been cancelled.
8. Proposed s 54A also enables the Director General to reinstate the incorporation of an association if satisfied that it should not have been cancelled.

Issues Considered by the Committee

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| <p>9. 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.

3. BIOFUEL (ETHANOL CONTENT) BILL 2007

Date Introduced:	20 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Phil Koperberg MP
Portfolio:	Climate Change Environment and Water

The Bill passed all stages of Parliament on 27 June 2007. Under s 8A(2), 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 purpose of the Bill is to require a minimum of 2% ethanol content for total petrol sales in NSW. It applies to sales to a person in NSW and to delivery in NSW.

Background

2. It was noted in the Agreement in Principle speech that:

The Bill marks an important step forward in our efforts to promote renewable biofuels in Australia. It is the first mandate of its kind in Australia and fulfils a commitment given by the Premier in February this year that a re-elected Lemma Government would introduce a mandate requiring 2 per cent of the total volume of sales of petrol in New South Wales to be ethanol.²

3. A taskforce was established in 2006 to examine the feasibility of a 10 per cent mandate and the broader use of other biofuels. The taskforce is to report later in 2007.

The Bill

4. Clause 6 requires a primary wholesaler to ensure that the volume of ethanol sold in petrol-ethanol blend is at least 2% of the total volume of petrol sold during each quarter. The Bill applies to the sale of petrol by a primary wholesaler to a person in NSW or for delivery in NSW: clause 5. A return noting the total volume of petrol and total volume of ethanol sold must be furnished to the Director-General within one month of the end of the relevant period: clause 7.
5. Failure to comply with the minimum 2% ethanol requirement is to be deemed an offence: clause 9. It is also an offence to fail to furnish a return or to furnish one containing information that the person knows or ought reasonably to know is false or misleading in a material particular: clause 10. Likewise it is an offence to keep and retain records that are false or misleading in a material particular.

² The Hon P C Koperberg MP, Legislative Assembly *Hansard*, 20 June 2007.

6. Clause 11 of the Bill enables the Minister to periodically publish information about compliance with the Bill, and may accordingly publish the names of primary wholesalers who fail to comply with the Bill.
7. The Minister may exempt a specified primary wholesaler from compliance with the Act if compliance is uneconomic because of the price at which ethanol can be reasonably obtained or in circumstances prescribed by the regulations: clause 12. However, the Minister is to first refer the proposed exemption to the Expert Panel for advice.
8. The Expert Panel is to consist of the heads of the Department of State and Regional Development, the Department of Primary Industries, the Department of Environment and Change and the Department of Commerce, or their nominees: clause 20.
9. Clause 13 enables the Minister, following advice from the Expert Panel, to suspend the ethanol mandate if compliance:
 - (a) is uneconomic as a result of the price at which primary wholesalers are reasonably able to obtain ethanol or industry-wide ethanol shortages, or
 - (b) may result in a risk to public health or safety, or
 - (c) may have an adverse effect on the retail price of petrol for motorists, or
 - (d) should be suspended for some other extraordinary reason.
10. The Director-General may appoint any member of staff of the Department of State and Regional Development as an investigator: clause 14. The investigator has the power to require a person to provide information, produce records, or appear before the investigator to give evidence and produce records: clause 15. These powers are only to be exercised to impose a requirement on a primary wholesaler or any person the investigator reasonably believes has been supplied with petrol by a primary wholesaler. The powers of investigators may be exercised for the purpose of ascertaining any contravention or compliance with the provisions of the Bill or to obtain evidence, records or information of any contravention or compliance: clause 16. The investigator is empowered to enter and inspect at any reasonable time any premises the investigator believes on reasonable grounds are premises used for the conduct of any aspect of business of a primary wholesaler or are used for the conduct of a business by a person whom the investigator reasonably believes has been supplied with petrol by a primary wholesaler. An investigator is not to enter any part of premises used for residential purposes unless the occupier consents.
11. Clause 22 provides that the State does not incur any liability and that compensation is not payable as a result of the operation of the Bill, or the exercise by any person of a function under the Bill, or failure to exercise a function.
12. The Minister is to review the Act within three years of the date of assent to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Issues Considered by the Committee

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

Issue: Strict liability – Clauses 9 and 10

13. Clause 9 of the Bill provides that a primary wholesaler who fails to comply with the minimum 2% ethanol requirement is guilty of an offence with a maximum penalty of 100 units in the case of a first offence and 1000 penalty units if it is a second or subsequent offence. The offence is one of strict liability. A defence is provided in clause 9(2) should the defendant prove that he or she took all reasonable steps to comply with the minimum 2% ethanol requirement.
14. Clause 10 also imposes liability on a person who fails to furnish a return and/or who fails to keep and retain the necessary records. A defence is provided for a failure to keep and retain records if the defendant can prove that he or she had a reasonable excuse.
15. Imposing strict liability is often seen as contrary to the fundamental right to be presumed innocent until proven guilty as a person is presumed to have committed the offence irrespective of their intention. Article 14(2) of the *International Covenant on Civil and Political Rights* provides that: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.
16. However, the imposition of strict liability will not always unduly trespass on personal rights and liberties. It may be relevant to consider: the impact of the offence on the community; the penalty that may be imposed; and the availability of any defences or safeguards.³
17. The Bill is designed to ensure that a minimum of 2% of total petrol sales in NSW is ethanol, and that primary wholesalers comply with the reporting requirements. Imposing strict liability may have the effect of bolstering compliance with the legislation.
18. The maximum penalty that may be imposed is 100 penalty units in the case of a first offence and 1000 penalty units if it is a second or subsequent offence. This currently equates to \$11,000 and \$110,000 respectively. The Minister may also publish the names of primary wholesalers who fail to comply with the legislation as well as information about the nature and extent of such failure.
- 19. The Committee stresses that the presumption of innocence is a fundamental right. It highlights that the imposition of strict liability removes the requirement on the prosecution to prove that the defendant intended to commit the offence.**
- 20. However, the imposition of strict liability may be acceptable in circumstances where it is designed to protect the public interest and after consideration of any defences available and the type of penalties that may be imposed.**

³ Legislation Review Committee, *Strict and Absolute Liability: Responses to the Discussion Paper*, Report No 6, 17 October 2006, p 4.

21. The Committee concludes that, given the inclusion of defences and limiting the penalties that may be imposed to monetary ones only, personal rights and liberties are not unduly trespassed by the inclusion of strict liability offences.

Issue: Right to privacy - clause 11

22. Clause 11 of the Bill permits the Minister to periodically publish information about compliance by primary wholesalers. This includes publication of the names of primary wholesalers who fail to comply with the minimum 2% ethanol requirement as well as information about the nature and extent of any such failure. A copy of the return furnished by the primary wholesaler may also be furnished.
23. The right to privacy is enshrined in article 17 of the *International Covenant on Civil and Political Rights* which provides that 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.
24. In certain cases, public interest may override the right to privacy. For example, the threat of publication may encourage primary wholesalers to comply with the legislation.
25. Whilst clause 11(4) provides that the regulations can prohibit the publication of specified information for the protection of the confidentiality of the information, there is no default protection in the Act. The regulations may offer some protection or none at all.

Issue: Power of entry into premises – clause 16

26. Clause 16 empowers an investigator to enter and inspect at any reasonable time any premises that the investigator believes on reasonable grounds are premises used for the conduct of any aspect of the business of a primary wholesaler or used for the conduct of a business by a person reasonably believed to have been supplied with petrol. Whilst on the premises the investigator may:
- require the production of records relating to the sale or purchase of petrol and may subsequently inspect and take copies of such records;
 - may seize such records if the investigator considers it necessary to do so for the purpose of obtaining evidence;
 - require any person on those premises to answer questions or otherwise furnish information in relation to the sale or purchase of petrol;
 - require the owner or occupier of those premises to provide the investigator with such assistance and facilities as is or are reasonably necessary to enable the investigator to exercise the functions of an investigator.
27. The power to enter private property without consent or warrant trespasses on the right to privacy. However, a sufficient public interest may justify such a trespass.
28. There are some limitations on the exercise of the powers of an investigator. Entry is only permitted at a reasonable time and entry to premises used for residential purposes requires consent.

29. However, an investigator is not required to have any particular skills or qualifications as the Director-General may appoint and provide a certificate of authority to any member of staff of the Department of State and Regional Development as an investigator: clause 14.

30. The power to enter premises may trespass on the right to privacy. The Committee acknowledges that there are some limitations on the power of entry given to investigators. The Committee refers to Parliament whether the power of entry unduly trespasses on the right to privacy.

Issue: Denial of compensation - clause 22

31. Clause 22 excludes the State from liability and the payment of compensation in relation to:
- (a) the enactment of operation of this Act,
 - (b) the exercise by any person of a function under this Act or a failure to exercise any such function,
 - (c) any statement or conduct relating to the regulation of the ethanol content of petrol supplied by petrol suppliers.

This includes conduct that is unconscionable, misleading or deceptive and a statement that is negligent, false or misleading.

32. Whilst the Bill excludes the State from any liability or payment of compensation in relation to certain matters, the Committee acknowledges that there is a public interest in the State being able to regulate the ethanol content of petrol sales without the constraints of potential litigation.

33. The Committee has concerns about the denial of compensation and asks Parliament to consider the question of whether the exclusion of liability unduly trespasses on personal rights and liberties.

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Commencement by proclamation

34. Whilst the Agreement in Principle speech suggests that the 2 per cent mandate is to commence in October 2007, clause 2 of the Bill specifies that the Bill is to commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

35. The Committee has concerns about the Bill commencing on proclamation and asks Parliament to consider whether providing for commencement by proclamation rather than on assent is an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

4. BROTHELS LEGISLATION AMENDMENT BILL 2007

Date Introduced:	20 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Planning

The Bill passed both Houses on 28 June 2007. Under s 8A(2), 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. This Bill amends *the Environmental Planning and Assessment Act 1979*, the *Restricted Premises Act 1943* and the *Land and Environment Court Act 1979* with regard to the closure of disorderly or unlawful brothels, and for other purposes.

Background

2. Since 1995, the use of premises as a brothel has not been a criminal offence. Premises can be lawfully used as a brothel but only with appropriate planning consent in accordance with the *Environment Planning and Assessment Act 1979*. The requirement to obtain planning consent means that brothels operate in accordance with relevant planning instruments and conditions of consent, to ensure close supervision and regulation by councils of the impact of a brothel on the community.
3. It has been 12 years since the *Disorderly Houses Amendment Act 1995* made the regulation of brothels as a planning issue for local government. Brothels that operate without consent also fall outside the regulatory safeguards that protect the workers, clients and the interests of the community. Sex workers in illegal brothels can also be exploited.
4. In the past 6 years, the Coalition has attempted to introduce Bills to close down illegal brothels. In 2001, the Community Protection (Illegal Brothels) Bill was introduced to give powers for councils to close down illegal brothels within 48 hours, and it reversed the onus of proof. In 2003, the Community Protection (Closure of Illegal Brothels) Bill was introduced. A private member's bill was also introduced back in 2001.
5. The basis of this Bill comes from the need for councils to take quick and effective action against brothels which operate without development consent, in contravention of their conditions of consent or where there is a demonstrated adverse impact on the community.
6. To overcome some of the difficulties that councils face when they seek to obtain evidence that premises are being used as a brothel, the Bill aims to amend the

definition of 'brothel' to include that prostitution does not need to be a habitual use of premises for such premises to constitute as a brothel, instead, council only needs to demonstrate the premises have been used for the purpose of prostitution and that the premises are likely to be used for that purpose in the future. The Bill will allow the use of circumstantial evidence. It will also provide for orders to cut electricity, gas and water supplies.

7. This Bill aims to alleviate the burden on local government in terms of proof and cost, including legal fees, court delays and costs of private investigators to obtain sufficient level of proof.
8. This Bill widens the definition of 'brothel' from a premise used for the purposes of prostitution to include premises advertised for prostitution. It also addresses the situation when the brothel owner avoids prosecution by selling or transferring the lease. Financial penalties will increase for repeat offenders.
9. The Legislative Council returned the Bill with amendments after consideration in detail. Schedule 1 [1] is re-worded to define brothel as 'a brothel within the meaning of the *Restricted Premises Act 1943*, other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute'. This amended definition seeks to ensure that individual private sex workers or home-based single prostitutes are not to be targeted, and is in recognition of the distinction between commercial and home-based sex services premises, with their differential impact on local amenities.
10. Schedule 1 [3] on the proposed section 124AB (1) has inserted 'Subsections (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the *Restricted Premises Act 1943*' after the word 'brothel'. Schedule 2 [4] is re-worded to insert: [4] Section 17 (2A) after section 17 (2): 'For the purposes of subsection (2), one complaint may be sufficient to warrant the making of an application in the case of a brothel used or likely to be used for the purposes of prostitution by 2 or more prostitutes'. This amendment aims to clarify that in the case of a single prostitute, the council will need sufficient complaints, a term also referred to in the *Restricted Premises Act* so that the procedure is not based on one complaint but on multiple complaints. The amendment provides that if 2 or more complaints were received, only one complaint would be required. This aims to prevent the making of malicious complaints by one person against a single person who is being accused of being a prostitute.
11. Concerns for potential corruption such as the Independent Commission Against Corruption's investigation on allegations that a Council officer received bribes, sexual favours and money in return for not policing services premises or compliance officers targeting home occupations for closure without complaint have been raised. Concerns have also been raised about the possibility of an operator of a commercial brothel lodging a complaint against a private home-based sex worker, as well as any sexually active person may be the target of a single complaint.

The Bill

12. The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979*, the *Restricted Premises Act 1943* and the *Land and Environment Court Act 1979* with respect to disorderly or unlawful brothels to:
- (a) allow orders under the *Environmental Planning and Assessment Act 1979* (the *EPA Act*) in relation to the use of premises for brothels (brothel closure orders) to prohibit their use for other specified related sex uses and to extend the categories of persons who may give such orders and to whom such orders may be given,
 - (b) allow brothel closure orders to commence after 5 working days,
 - (c) make additional provision in respect of the enforcement of brothel closure orders and other breaches with regard to brothels, including limiting adjournments, clarifying that the Land and Environment Court may rely on circumstantial evidence instead of direct evidence of the use of premises when determining whether there is a breach of a requirement relating to brothels, allowing utilities orders to be made prohibiting the supply of water, electricity or gas to brothel premises and increasing penalties for repeat offenders,
 - (d) expand the definition of a brothel that may be subject to an order under the *Restricted Premises Act 1943* (the *RP Act*) to include premises that have been advertised or represented to be used for prostitution and are likely to be used for that purpose,
 - (e) expand the basis on which an application for such an order may be made and to extend the persons or bodies who may apply for an order,
 - (f) make additional provision with regard to orders under the *RP Act* that prohibit premises from being used as brothels, including for such orders to also prohibit the use of premises for specified related sex uses and ensuring that the Land and Environment Court may rely on circumstantial evidence instead of direct evidence of the use of premises when determining whether to make an order,
 - (g) include utilities orders in the relevant class of matters dealt with by the Land and Environment Court,
 - (h) make other minor amendments.

Issues Considered by the Committee

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

Procedural Fairness: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2) Natural justice requirements not applicable. (A person who gives a brothel closure order is not required to comply with sections 121G – 121K. Note: Sections 121G – 121K provide, among

other things, for the notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given and information about appeal rights).

13. The Committee notes that under the current *Environmental Planning and Assessment Act 1979*, section 121H requires notice to be given of a proposed order; section 121I allows for the making of representations; section 121J provides for the hearing and consideration of representations; and section 121K sets out the procedure for after the hearing and consideration of representations including, the giving of an order with modifications or not giving an order. The bill will remove the applicability of these provisions.
14. The Committee will always be concerned about legislation that authorises administrative decision-making without providing for the right of those affected to have their views heard, especially in the context that the finding may be made on circumstantial evidence without any direct evidence that the premises are used as a brothel as proposed by Schedule 1 [3] to insert section 124AB (5) (a) and (b).

15. The Committee has concerns with regard to the proposed Schedule 1 [2] to insert the proposed section 121ZR (2), and asks Parliament to consider whether that it may be an undue trespass on the right to procedural fairness by legislating away the need to give notice and to hear representations concerning the making of a brothel closure order.

Fair Trial: Proposed Schedule 1 [3] to insert section 124AB (5) (a) and (b) Finding may be made on circumstantial evidence.

16. The Committee notes that circumstantial evidence is indirect evidence, whereas direct evidence is of a fact in issue which is actually perceived by a witness. It can be argued that this has lowered the threshold of establishing the proof that the premises are used as a brothel. To balance the fairness of the proceedings, the Committee is of the view that the affected person should have a right to be heard and to make representations concerning the making of a brothel disclosure order.

17. The Committee has concerns with regard to the proposed provisions and asks Parliament to consider whether the above proposed provisions on accepting a finding based on circumstantial evidence may be unfair to the affected person if it is also not balanced by amendments to include a right to be heard and to make representations at the time of the making of a brothel disclosure order.

Right to Housing: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZR (2) Natural justice requirements not applicable.

18. The Committee notes that under the current *Environmental Planning and Assessment Act 1979*, section 121G addresses orders that make or are likely to make residents homeless, if so, the person who gives the order must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality. If not, the person who gives the order must provide the resident with information as to the availability of satisfactory alternative accommodation in the locality and any other assistance the person considers appropriate. The bill will

remove the applicability of this provision, and abrogate this right to satisfactory accommodation.

19. The Committee is of the view that brothel closure orders may have the unintended effect of making a person or a prostitute homeless, and this conflicts with the right of a person to adequate housing⁴. The affected person would also not receive any notice of the closure order, or be able to make any representation concerning such an order.

20. The Committee asks Parliament to consider whether that the proposed Schedule 1 [2] to insert section 121ZR (2) and remove the applicability of the current section 121G on satisfactory accommodation, may trespass unduly on personal rights and liberties.

Denial of Compensation: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZS (9) Enforcement of brothel closure orders by cessation of utilities. (No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order).

21. The effect of this provision is the power to terminate contracts or agreements between the utilities provider and the premises, where the denial of compensation rights is particularly significant.
22. The Committee considers that, while it may be necessary for such draconian powers to make a cessation of utilities order in order to enforce a brothel closure order to protect community interests, it is not appropriate that innocent persons who suffer damage or loss as a result of the exercise of those powers should be left to bear the cost of that damage, including those arising from any successful appeals against the brothel closure order.

23. The Committee asks Parliament to consider whether that it is an undue trespass to personal rights and liberties when there is a denial of compensation for innocent persons who suffer damage as a result of making the cessation of utilities order for the enforcement of a brothel closure order, including any successful appeals against the brothel disclosure order.

Non-reviewable decisions [s 8A(1)(b)(iii) LRA]

Exclude judicial review: Proposed Schedule 1 [2] - Amendment of *Environmental Planning and Assessment Act 1979* to insert the proposed section 121ZS Enforcement of brothel closure orders by cessation of utilities.

24. The Committee will always be concerned if there is no appeal available from the making of utilities order.

25. The Committee asks Parliament to consider whether the lack of appeal rights and procedure for utilities orders may be an undue trespass to personal rights and liberties.

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Clauses which allow amendment of Acts by a regulation: Proposed Schedule 1 [2] to insert proposed section 121ZR (8) (a), (b), (c), (d) with regard to appeals. (Regulations may be made for or with respect to the following: (a) conferral of jurisdiction on Local Courts with respect to appeals against brothel closure orders; (be) removing the right to appeal under section 121 ZK if an appeal is made to a Local Court under the regulations; (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of a Local Court on appeals; (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to above).

26. The Committee notes that allowing regulations to make any provision with respect to the removal of rights of appeal and conferral of jurisdiction is a broad power which could, in theory, enable regulations to be made to undermine the operation of those Acts.
27. This also enables the removal of the right to appeal by regulation. The Committee will always be concerned if there is an inappropriate delegation of legislative power to oust the jurisdiction of the courts as judicial review is vital for protecting individual rights against oppressive administrative action and in the upholding of the rule of law.

28. The Committee asks Parliament to consider whether the above proposed schedule to amend the Acts by regulation is an inappropriate delegation of legislative power, and that it may also be an inappropriate delegation of legislative power to oust the jurisdiction of the courts as judicial review is vital for protecting individual rights against oppressive administrative action and in the upholding of the rule of law.

The Committee makes no further comment on this Bill.

⁴ Article 25 (1) of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948, provides that everyone has a right to a standard of living adequate for health and well being, including housing.

5. CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT (PUBLICATION OF NAMES) BILL 2007

Date Introduced:	8 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Children (Criminal Proceedings) Act 1987* with respect to the prohibition against the publication and broadcasting of names in connection with criminal proceedings involving a child, and for related purposes.

Background

2. Section 11 (Publication and broadcasting of names) of the *Children (Criminal Proceedings) Act 1987* (the *Principal Act*) prohibits the publication or broadcasting of the names of children (and persons who were children at the time) in connection with certain criminal proceedings. Section 11 was amended in 2001 to make it clear that the prohibition applied even if the relevant person was no longer a child at the time of the publication or broadcast and was further amended in 2004 to make it clear that the prohibition applied even if the relevant person was deceased at the time of the publication or broadcast.
3. Section 11 (4) of the current Principal Act also provides that the prohibition does not apply in certain circumstances such as a child 16 years or older at the time of publication or broadcasting may consent to the publication or broadcast of the child's name. Section 11 (1)(d) of the Principal Act currently provides that the name of a brother or sister of a victim of an offence to which criminal proceeding relate (where the brother or sister and the victim were both children when the offence was committed) must not be published or broadcast in a way that connects the brother or sister with the criminal proceedings.
4. The amendments proposed for Section 11 would allow certain family members, other than the defendant, of deceased children to waive the right to non-publication; and also to clarify that the section was not intended to operate retrospectively. When a parent or senior available next of kin is considering whether to give consent to the publication or broadcasting of the name of a deceased child, reasonable efforts must be made to take into account the views of the deceased child's siblings. The aim of this amendment is to give empowerment to the victim's family.
5. The amendment to clarify retrospectivity refers to the prohibition on the publication or broadcasting of persons' names would not apply if that child's name had been lawfully broadcast or published in the past before the relevant amendments were passed in 2001 and in 2004.

Children (Criminal Proceedings) Amendment (Publication Of Names) Bill 2007

6. In the past, a person who has parental responsibility for a child would have been described as the child's guardian or the person who has custody of the child. The terminology is no longer in use in family law. The proposed schedule 1 provides a definition on the senior available next of kin.

The Bill

7. The object of this Bill is to amend the *Children (Criminal Proceedings) Act 1987* (the *Principal Act*) to:
- (a) enable the parents of a deceased child, or other senior available next of kin, to consent to the publication or broadcast of the deceased child's name,
 - (b) provide that the prohibition does not apply to the publication or broadcast of names that had previously been published or broadcast before the clarifying amendments commenced in 2001 and 2004.

Schedule 1 [2] – [4] amend Section 11 of the Principal Act to provide, as a further exception, that the prohibition on publication and broadcasting does not apply to the publication or broadcasting of the name of a deceased child where a senior available next of kin of the child has given consent to the publication or broadcasting, but only if it appears to the senior available next of kin, after making reasonable inquiries that no other senior available next of kin objects to the publication or broadcasting of the name.

A senior available next of kin who is charged with, or is convicted of, an offence to which the criminal proceedings concerned relate, cannot give consent, or object to the publication or broadcasting of the name of a deceased child.

Schedule 1 [3] inserts proposed Section 11 (4G) into the Principal Act to provide that, when considering whether to give consent to the publication or broadcasting of the name of a deceased child, a senior available next of kin must, if the publication or broadcasting of the name of a brother or sister of the deceased child is also prohibited:

- (a) make inquiries that are reasonable in the circumstances to obtain the views of that brother or sister regarding the publication or broadcasting of the name of the deceased child, and
- (b) take into account the impact of such a publication or broadcasting on that brother or sister.

Schedule 1 [6] inserts proposed clause 18 of Schedule 2 to provide that Section 11 would not prohibit the publication or broadcast of:

- (a) the name of a person who was a child when the person committed an offence if the name of that person had been published or broadcast before 21 December 2001 (the date on which that section was amended by the *Criminal Legislation Amendment Act 2001*), but only if the person had reached adulthood before that publication or broadcast took place,
- (b) the name of a deceased child that was published or broadcast before 24 March 2004 (the date on which that section was amended by the *Crimes*

Legislation Amendment Act 2004), but only if the child had died before that publication or broadcast took place.

Issues Considered by the Committee

8. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

The Committee makes no further comment on this Bill.

6. CLIMATE FUTURES BILL 2007*

Date Introduced: 21 June 2007
House Introduced: Legislative Council
Member Responsible: Dr John Kaye MLC

Purpose and Description

1. The objects of the Bill are to:
 - (a) prohibit the expansion of the coal industry;
 - (b) prohibit the development of new coal-fired power stations or the expansion of existing coal-fired power stations;
 - (c) fast track the development of a renewable energy industry;
 - (d) increase renewable energy targets; and
 - (e) ensure that workers and communities affected by a declining coal industry will have access to retraining, employment and financial assistance.

Background

2. It was noted in the Second Reading speech that the purpose of the Bill is to respond to the climate crisis by addressing the largest single source of greenhouse gas emissions, namely coal. The Bill seeks to establish a timetable for increasing the use of post-carbon sources of energy and to improve energy efficiency. According to the Second Reading speech:

The bill prohibits the development of new coalmines and new coal-fired electricity generating capacity or any other activity to extend the life or increase the capacity of existing coalmining or generating facilities. It also seeks to undo two massive planning errors made by the lemma Government by retracting approval for the Anvil Hill coalmine and for the coal loader expansion in Port Newcastle. The effect of these provisions would be the predictable and orderly run down of the coal industry in the State over a period of a decade and a half or more: As existing coalmines fully exploit their resources they will close; as power stations reach the end of their economic life they will be shut down without replacement.

The intent is to create an orderly and predictable timetable for the State to break its dependence on coal for domestic generation and export.⁵

The Bill

3. Clause 5 of the Bill would prohibit the following developments:

⁵ Dr J Kaye MLC, Legislative Council *Hansard*, 21 June 2007.

- (a) establishing a coal mine;
 - (b) any development that expands or increases the level of operations of an existing coal mine;
 - (c) any development that increases the capacity of any coal export terminal or other form of transport infrastructure that is specifically designed and used for the purposes of handling coal;
 - (d) establishing a coal-fired power station;
 - (e) any development that increases the capacity of an existing coal-fired power station to generate electrical power; and
 - (f) any development that extends the operational life of an existing coal-fired power station by changing the technology used at the power station.
4. Clause 6 specifically revokes planning approval for:
- The expansion of the Kooragang Coal Terminal (approval was granted on 13 April 2007);
 - The construction of the coal export transport terminal on Kooragang Island, Newcastle (approval was granted on 13 April 2007); and
 - The establishment of the Anvil Hill coal mine (approval was granted on 7 June 2007).
5. Renewable energy targets are established in clause 7. Renewable energy is subsequently to constitute 20% of all electricity consumed in NSW by the end of 2012. This target increases to 50% by the end of 2020.
6. Clause 8 expresses the intention of Parliament that the NSW Government will provide or make financial assistance available to:
- coal miners and other coal industry workers whose jobs are adversely affected by the closure of a coal mine or a coal-fired power station or because of other reasons associated with a declining coal industry; and
 - local government areas in which the employment of more than 5% of the adult resident population has been adversely affected and small and locally owned and operated businesses that are adversely affected by the closure of a coal mine or coal-fired power station or because of other reasons associated with a declining coal industry.

Financial assistance may be directed towards the provision of new business and employment opportunities that result from the renewable energy targets, as well as retraining and reskilling programs.

Issues Considered by the Committee

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

Issue: Clauses 5(3) and 6: Revocation of planning approval

7. Clause 5 of the Bill sets out various developments that are prohibited. Clause 5(3) revokes any planning approval that is given or granted for any prohibited development. Clause 6 specifically revokes planning approval that has been given in relation to the Anvil Hill coal mine and the Kooragang Coal Terminal and its coal export transport terminal. The Bill would thus remove the right to development.
 8. Loss may accordingly result to those who, in good faith, obtained planning approval for the development of these sites and subsequently acted on the basis of such approval.
 9. Section 96A of the *Environmental Planning and Assessment Act 1979* provides for compensation to be paid in certain circumstances where development consent is revoked by the Director-General or a council. A person affected by the revocation may recover compensation for expenditure incurred subsequent to obtaining the consent. However s 96A(9) excludes the operation of the section from consent granted by a Minister.
 10. The Bill does not expressly provide for the payment of compensation for loss or expenses incurred in relation to the revocation of planning approval.
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| <ol style="list-style-type: none">11. The Committee notes that passage of the Bill may adversely affect those who have obtained planning approval in relation to the Anvil Hill coal mine and the Kooragang Coal Terminal and its coal export transport terminal.12. Accordingly, the Committee asks Parliament to consider whether the revocation of planning approval in accordance with clause 6 of the Bill unduly trespasses on rights and liberties. |
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The Committee makes no further comment on this Bill.

7. CONSTITUTION AMENDMENT (SPEAKER) BILL 2007

Date Introduced:	8 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier, Citizenship

Purpose and Description

1. The Bill amends the *Constitution Act 1902* to enable the Speaker to take part in debates or discussions, and to vote, when not presiding in the Legislative Assembly.

Background

2. The *Constitution Act 1902* does not currently contain any express provision to permit a Speaker to take a position during debate or to exercise a deliberative vote on matters, including matters that affect the Speaker's electorate.
3. The Legislative Assembly has elected an Independent member of the House as Speaker. New standing orders for the Legislative Assembly have been adopted recently, which have dispensed with the Committee of the Whole procedure. The Speaker was able to participate in debates and to cast a deliberative vote under the previous arrangements in the Committee of the Whole.
4. The impartial exercise of functions by the Speaker is important for the effective working of Parliament but the Speaker also has responsibilities to the electorate that elected him or her. Deputy and Acting Speakers are already able to vote when not presiding. This Bill aims to ensure that the constituents of each electorate in NSW can be represented.
5. The Bill does not amend any of the provisions of the Constitution Act with regard to the proceedings in the Legislative Council.

The Bill

6. The object of this Bill is to amend the *Constitution Act 1902* to enable the Speaker to take part in debates or discussions, and to vote, when not presiding in the Legislative Assembly. The Speaker when presiding has a casting vote in the event of an equality of votes. As a result of recent changes to the Standing Orders, the detailed consideration of Bills is not held in proceedings of the House instead of in the Committee of the Whole presided over by the Chair of Committees. This Bill will also ensure that the Speaker can continue to participate in the detailed consideration of a Bill in the Legislative Assembly.

Schedule 1 [1] amends Section 31 of the Constitution Act by inserting a new subsection 4, which provides that the Speaker may take part in any debate or discussion

and vote on any question in the Legislative Assembly when the Speaker is not presiding. Schedule 1 [2] amends Section 32 (1) of the Constitution Act to clarify that it is the presiding member, whether that be the Speaker or another member, who is excluded for the purposes of determining whether there is a quorum. Schedule 1 [3] amends Section 32 (2) of the Act to clarify that it is the presiding member, whether that be the Speaker or another member, who is precluded from casting a deliberative vote but who has a casting vote in the event of an equality of votes.

Issues Considered by the Committee

7. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

The Committee makes no further comment on this Bill.

8. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (ASSISTANCE IN FOREIGN CRIMINAL MATTERS) BILL 2007

Date Introduced:	7 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

The Bill passed all stages of Parliament on 28 June 2007. Under s 8A(2), 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 purpose of the Bill is to amend the *Crimes (Administration of Sentences) Act 1999* to complement the *Mutual Assistance in Criminal Matters Act 1987* (Cth). The Bill establishes an approval process to allow an offender to travel to a foreign country for the purpose of giving evidence at a proceeding or giving assistance in relation to an investigation relating to a criminal matter pursuant to a request made by the Commonwealth Attorney General.

Background

2. The *Mutual Assistance in Criminal Matters Act 1987* enables the Commonwealth Attorney General to arrange for an offender to travel to a foreign country to give evidence at a proceeding or provide assistance regarding an investigation of a criminal matter. It was noted in the Agreement in Principle speech that a foreign country may request the attendance of an inmate or parolee in Australia 'if there are reasonable grounds to believe the inmate is capable of giving evidence relevant to a proceeding or assistance in relation to an investigation and the inmate has consented to do so'.⁶
3. Complementary State legislation is required for the giving of approval in situations where the offender is a State inmate or parolee or both a State and Federal inmate or parolee. In such a situation the Commonwealth Attorney General needs to obtain approval from the relevant State authority before the offender may travel to the foreign country.

The Bill

4. The Bill proposes to insert s 255A into the *Crimes (Administration of Sentences) Act 1999*. Proposed s 255A enables the Parole Authority (if the offender is on release on parole or is the subject of a home detention order) or the Commissioner, following a

⁶ B J Collier MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 20 June 2007.

Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007

request by the Commonwealth Attorney General, to grant written approval for an offender to travel to a foreign country to give:

- (a) evidence at a proceeding relating to a criminal matter; or
- (b) assistance in relation to an investigation relating to a criminal matter.

5. The inmate remains in custody for the duration of his or her absence.

Issues Considered by the Committee

<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.

9. CRIMINAL PROCEDURE AMENDMENT (LOCAL COURT PROCESS REFORMS) BILL 2007

Date Introduced:	6 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Police

The Bill passed all stages of Parliament on 28 June 2007. Under s 8A(2), 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 purpose of the Bill is to amend the *Criminal Procedure Act 1986* to remove the requirement that a brief of evidence in proceedings for an indictable offence triable summarily be served prior to the time fixed for making an election regarding whether the offence is to be tried on indictment.
2. The Bill also proposes to amend the Criminal Procedure Regulation 2005 to expand the prescribed list of proceedings for which a brief of evidence does not need to be served. This is to operate on a 12 month trial basis.

Background

3. The *Justices Amendment (Briefs of Evidence) Act 1997* introduced the requirement for the prosecution to serve a full brief of evidence on the defendant prior to a summary hearing. The defence had previously relied on a charge sheet and facts sheet.
4. The Premier's Delivery Unit completed the report *From Paperwork to Proactive Policing: Redtape Reduction in the Charge-to-Finalisation Process* in August 2006. The report proposed a number of reforms to the summary jurisdiction and expressed concern about the disproportionate amount of work that goes into the preparation of briefs of evidence in some minor matters.
5. The Bill was introduced (following consultation with the Attorney General's Department, the Ministry for Police, the Premier's Delivery Unit and the NSW Police Force) to reduce the amount of time police spend on paperwork and at court in relation to matters where the defendant ultimately decides to plead guilty. It was noted in the Agreement in Principle speech that in 2005 there were 18,500 Local Court hearings for offences yet the police prepared approximately 55,000 briefs of evidence. It is hoped that reducing the circumstances in which it is necessary to

prepare a brief of evidence will enable police to spend more time on frontline policing.⁷

The Bill

6. Section 265 of the *Criminal Procedure Act 1986* sets out the information that is to be given to a person charged with an indictable offence listed in Table 1 to Schedule 1 of the Act when he or she first appears before a Local Court in respect of the offence. The Bill proposes to amend s 265 to remove the requirement that the prosecutor serve on the person charged a copy of the brief of evidence relating to the offence before the time fixed by the Local Court for electing whether to have the offence dealt with on indictment by a jury rather than summarily by a magistrate. It also removes the requirement for the Local Court to adjourn proceedings where that appears to be just and reasonable if a brief of evidence has not been served in accordance with the section.
7. Schedule 2 of the Bill proposes to insert a new clause 24 into the Criminal Procedure Regulation 2005. This would keep the requirement that deems proceedings for an offence for which a penalty notice may be issued (some exceptions apply) as being of a kind in which a prosecutor is not required to serve a brief of evidence. However, it would alter clause 24 so that the following proceedings are also to be deemed as being of a kind in which a prosecutor is not required to serve a brief of evidence, but only for 12 months following the commencement of the subclause:
 - Proceedings for an offence under section 4 of the *Summary Offences Act 1988*
 - Proceedings for an offence under s 9 or 12 of the *Road Transport (Safety and Traffic Management) Act 1999*
 - Proceedings for a summary offence for which there is a monetary penalty only.

Issues Considered by the Committee

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

Issue: Procedural fairness

8. The amendments proposed by the Bill raise concerns about the potential repercussions on a defendant's entitlement to procedural fairness. A defendant is entitled to know the evidence against him or her and the case he or she has to meet.
9. The Committee notes that the proposed amendment to s 265 of the *Criminal Procedure Act 1986* affects the timing of receipt of a brief of evidence rather than completely removing the obligation of the prosecution to serve one.
10. The Committee acknowledges the statement in the Agreement in Principle speech that 'less than 1 per cent of defendants elect to have table 1 matters tried before a jury in the District Court'.⁸ However, the Committee will be concerned in relation to

⁷ Hon D A Campbell MP, Legislative Assembly *Hansard*, 6 June 2007.

⁸ Hon D A Campbell MP, Legislative Assembly *Hansard*, 6 June 2007.

any impact on procedural fairness whether the number of people affected is large or small.

11. The Law Society of NSW has voiced concern regarding the practical implications of the Bill as it considers that it would be inappropriate for a lawyer to advise a defendant to plead guilty without seeing the relevant evidence.⁹ The Bill could thus have the effect of increasing the number of not guilty pleas which would defeat the Bill's aim of reducing the administrative workload of the police.
12. The Bill also alters Clause 24 of the Criminal Procedure Regulation 2005 to expand the kind of proceedings in which the prosecutor is not required to serve a brief of evidence.
13. The Agreement in Principle speech noted that the brief of evidence is to be replaced by a comprehensive facts sheet with copies of original police evidence attached. However, the legislation does not provide for this. Accordingly, there is the potential for the requirement of the brief of evidence to be removed but not replaced with a detailed facts sheet.
14. The Committee notes that the expansion of the relevant proceedings in clause 24 is for a 12 month trial period after which an independent evaluator is to assess it and determine whether there should be further reforms. However, the rights and liberties of some defendants may be affected without adequate protection throughout the trial period.

- 15. The Committee acknowledges that the Bill is designed to reduce the administrative burden on the police and subsequently free them for frontline policing. However, the need for improved efficiency does not justify interference with procedural fairness.**
- 16. The Committee also notes concerns, such as those voiced by the Law Society of NSW, that the amendments would increase the number of not guilty pleas. This would add to the workload of the court and may not result in a decrease in the number of briefs of evidence required. This would diminish any efficiency benefits that might otherwise be gained.**
- 17. Accordingly, the Committee concludes that the rights and liberties of the defendant are unduly trespassed.**

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Commencement by proclamation

18. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there are often good reasons why such discretion is required.

- 19. The Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

⁹ Hon J G Ajaka MLC, Legislative Council *Hansard*, 28 June 2007.

10. EDUCATIONAL SUPPORT FOR DYSLEXIC CHILDREN BILL 2007*

Date Introduced: 7 June 2007
House Introduced: Legislative Council
Member Responsible: Rev the Hon Fred Nile MLC

Purpose and Description

1. The purpose of the Bill is to amend the *Education Act 1990* to include dyslexia within the disability criteria of the NSW Department of Education and Training regarding the Special Education Initiative for children with disabilities.

Background

2. According to the Second Reading speech:

To date, children suffering from dyslexia have been catered for under the department's Learning Assistance Program, which provides one junior teacher or teacher's aide through the Support Teachers Learning Assistance program for every special education class. This bill seeks to have dyslexia included in the Government's disability criteria when providing special additional assistance to schoolchildren with disabilities.¹⁰

The Bill

3. Section 20 of the *Education Act 1990* empowers the Minister to provide or arrange special or additional assistance for government school children with special needs as listed in the section. The Bill proposes to insert s 20A into the *Education Act 1990* which would include dyslexia as a disability for the purposes of s 20.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

¹⁰ Rev the Hon F J Nile MLC, Legislative Council *Hansard*, 7 June 2007.

11. ELECTRICITY SUPPLY AMENDMENT (OFFENCES) BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Nathan Rees MP
Portfolio:	Emergency Services, Water Utilities

Purpose and Description

1. This Bill amends the *Electricity Supply Act 1995* and the *Criminal Procedure Act 1986* with respect to the theft of electricity and unlawful entering, climbing or being on electricity works; and for other purposes.

Background

2. This Bill aims to ensure the protection and security of electricity infrastructure such as transmission towers, power poles and distribution lines. In recent years, young people have been found climbing on transmission towers. At present, there are no criminal offences in NSW to prohibit a person from climbing on electricity works.
3. The new offence of entering, climbing or being on electricity works and the maximum penalty of \$1,100 fine or imprisonment for up to 3 years is consistent with the maximum penalty for climbing on, or jumping from other structures in section 8A of the Summary Offences Act. The new offence will not apply to persons authorised to be on electricity works unless authorised to do so by the network operator or retail supplier.
4. The other object of the Bill concerns the theft of electricity. The maximum term of imprisonment for this offence will be increased from 2 years to 5 years to be consistent with the maximum imprisonment term for larceny as the theft of electricity is no less serious than theft of other tangible goods. It also provides for the offence to be an indictable offence if committed by an individual. Chapter 5 of the Criminal Procedure Act will apply to the offence of the theft of electricity to allow for the summary disposal of proceedings for indictable offences unless an election to proceed on indictment is made. This is also consistent with the approach used for the disposal of larceny offences.

The Bill

5. The object of this Bill is to amend the *Electricity Supply Act 1995* to:
 - (a) increase the maximum term of imprisonment for the offence of theft of electricity from 2 years to 5 years and to provide for the offence to be an indictable offence if committed by an individual, and

- (b) create a new offence of entering, climbing or being on electricity works as defined in that Act, with a maximum penalty of 10 penalty units or 3 months imprisonment or both.
6. The Bill makes amendment to the *Criminal Procedure Act 1986* to provide for the summary disposal of the offence of theft of electricity.

Issues Considered by the Committee

7. The Committee notes that as the proposed maximum penalties are consistent or aligned with the current maximum penalties for the offence of larceny and for the offence of climbing on, or jumping from other structures in section 8A of the Summary Offences Act, there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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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.

12. ENERGY AND UTILITIES ADMINISTRATION AMENDMENT (CLIMATE CHANGE FUND) BILL 2007

Date Introduced:	19 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Phil Koperberg MP
Portfolio:	Climate Change Environment and Water

The Bill passed all stages of Parliament on 28 June 2007 and received assent on 4 July 2007. Under s 8(2), 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 purpose of the Bill is to establish a Climate Change Fund to respond to water scarcity and the need to reduce greenhouse gas emissions from electricity generation.

Background

2. An Energy Savings Fund and a Water Savings Fund currently exist under the *Energy and Utilities Administration Act 1987*. According to the Agreement in Principle speech, the Climate Change Fund is to:

help us respond to two key challenges of climate change: water scarcity and the need to reduce greenhouse gas emissions from electricity generation. The bill will extend the Water and Energy Savings Funds we established in 2005 and expand a very successful program to help business, government, schools, industry and households save water and energy.¹¹

The Bill

3. The Bill proposes to amend the *Energy and Utilities Administration Act 1987* to consolidate the Energy Savings Fund and Water Savings Fund established under that Act into a Climate Change Fund.
4. The Bill is to commence on 1 July 2007.
5. The purposes of the Climate Change Fund are set out in proposed s 34F. They are:
 - (a) to provide funding to reduce greenhouse gas emissions and the impacts of climate change associated with water and energy activities,

¹¹ The Hon P C Koperberg MP, Legislative Assembly *Hansard*, 19 June 2007.

- (b) to provide funding to encourage water and energy savings and the recycling of water,
 - (c) to provide funding to reduce the demand for water and energy, including addressing peak demand for energy,
 - (d) to provide funding to stimulate investment in innovative water and energy savings measures,
 - (e) to provide funding to increase public awareness and acceptance of the importance of climate change and water and energy savings measures,
 - (f) to provide funding for contributions made by the State for the purposes of national energy regulation.
6. The sources of payments into the Fund include: contributions from State water agencies or distribution network service providers as required by the Minister; money advanced by the Treasurer; money appropriated by Parliament; the proceeds of investment of money in the Fund; money directed or authorised to be paid into the fund by law; and voluntary contributions (proposed s 34G).
7. The Climate Change Fund can be used to: fund a measure that promotes a purpose of the Climate Change Fund; fund contributions the State is required to make for the purposes of national energy regulation; administrative expenses; and money directed or authorised by law to be paid from the Climate Change Fund (proposed s 34H).
8. Proposed s 34J empowers the Minister to require State water agencies or distribution network service providers to make an annual contribution for a specified financial year to the Climate Change Fund. The amount is not to exceed the maximum prescribed by the regulations if one is so prescribed.
9. The Climate Change Fund is to be a continuation of the Water Savings Fund and the Energy Savings Fund that currently operated under the *Energy and Utilities Administration Act 1987* (Schedule 1[5]).

Issues Considered by the Committee

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: No default maximum of compulsory contributions: proposed s 34J

10. The Bill empowers a Minister to require a State water agency or distribution network service provider to make an annual contribution for a specified financial year to the Fund. Such an order by the Minister must specify the annual contributions payable and is not to exceed the maximum amount, if any, prescribed by the regulations. However, no default maximum amount is set by the Bill in the event that the regulations do not prescribe an amount.

- 11. The Committee considers that it is appropriate to vary any maximum compulsory contribution level by regulation as any such variation would be disallowable by Parliament. However, the lack of a default maximum level that applies if no maximum level is prescribed by regulation delegates to the Government the power to determine whether or not there should be a maximum at all.**
- 12. The Committee is concerned that the failure to provide a default maximum level of compulsory contributions payable into the Climate Change Fund may be an inappropriate delegation of legislative power.**

The Committee makes no further comment on this Bill.

13. GOVERNMENT PUBLICITY CONTROL BILL 2007*

Date Introduced: 7 June 2007
House Introduced: Legislative Assembly
Member Responsible: Barry O'Farrell MP

Purpose and Description

1. The purpose of the Bill is to provide for the scrutiny of government publicity likely to have the capacity to influence public support for: a political party; candidates for Parliament; or members of Parliament. It also establishes guidelines for government publicity.

Background

2. According to the Agreement in Principle speech, the NSW Government spent \$90 million on advertising in the 10 months leading up to the NSW election.¹² The Bill was subsequently introduced to provide the Auditor-General with a role in scrutinising and overseeing government advertising and the handling of complaints.

The Bill

3. Clause 3 of the Bill sets out the objects of the Bill, which are:
 - (a) to ensure that, as far as possible, public money is not expended on government publicity for a partisan political purpose, and
 - (b) to enable the Auditor-General to scrutinise government publicity that appears to the Auditor-General to have the capacity or to be likely to have the capacity to be used for that purpose.
4. 'Government publicity' is defined in cl 4 as 'any advertisement, promotional campaign, public relations campaign, announcement or means of publicising any governmental activities, programs or initiatives that is funded by public money, being public money that is paid to the person or body disseminating the publicity for a public authority'.
5. Clause 5 of the Bill defines 'government publicity for political purposes' as 'government publicity that promotes governmental activities, programs or initiatives in such a partisan or biased manner that it has the capacity, or is likely to have the capacity, to influence public support for a political party or for candidates for election to, or members of, Parliament'.

¹² B R O'Farrell MP, Legislative Assembly *Hansard*, 7 June 2007.

6. The Auditor-General may review any government publicity it considers may be government publicity for political purposes. It is mandatory to review any government publicity on which a public authority incurs or will incur \$200,000 or more in expenditure. A review may be conducted either on the Auditor-General's own initiative or on receipt of a complaint.
7. Clause 6 provides the Auditor-General with the following functions:
 - (a) to monitor and review expenditure by public authorities on government publicity that appears to the Auditor-General to be government publicity for political purposes;
 - (b) to examine and review the practices and procedures of public authorities relating to the dissemination of government publicity;
 - (c) to inquire into complaints made to the Auditor-General in accordance with section 10.
8. Schedule 1 contains three guidelines for government publicity:
 - Government publicity should be accurate, factual and truthful.
 - Government publicity should be fair, honest and impartial.
 - Government publicity should be lawful and proper.

The guidelines may be amended by the regulations on the recommendation of the Auditor-General: cl 7.
9. The head of a public authority is to ensure that any expenditure by the public authority on government publicity complies with the guidelines as well as with any order made by the Auditor-General: cl 8. The Auditor-General is empowered to order a public authority to: immediately cease the dissemination of any government publicity that is for political purposes and does not comply with the guidelines and for which the authority has incurred or will incur expenditure; modify the content, style of method of dissemination of any such government publicity so it complies with the guidelines; stop expenditure on any such government publicity or to limit expenditure on any such government publicity so it complies with the guidelines.
10. Clause 10 provides that any person may make a written complaint to the Auditor-General that a public authority has improperly incurred expenditure on government publicity for political purposes.
11. The Auditor-General is to present a report to Parliament each year (cl 11) and may submit a special report at any time on a matter the Auditor-General believes should be brought to the attention of Parliament (cl 12).
12. The Minister is to review the Bill after five years from the date of assent (cl 15).

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.

14. GOVERNMENT SCHOOLS (INFRASTRUCTURE REGISTER) BILL 2007*

Date Introduced: 7 June 2007
House Introduced: Legislative Assembly
Member Responsible: Andrew Stoner MP

Purpose and Description

1. The purpose of the Bill is to require the Director-General of the Department of Education and Training to keep an infrastructure register (comprising information on the status of capital infrastructure and three yearly plans on building and maintenance work) in relation to government schools.

Background

2. The Bill is similar to the Government School Assets Register Bill 2003 introduced by Mrs Jillian Skinner in July 2003. Both Bills attempted to implement some of the recommendations of the Vinson inquiry into the provision of education in NSW (the inquiry commenced in 2001 and reported in 2002), notably that indicators regarding unmet needs in relation to school buildings and their maintenance be constructed and maintained, and that a formula be devised for weighting the maintenance component of the global budget of schools with the greatest need.

The Bill

3. Clause 4 of the Bill requires the Director-General of the Department of Education and Training to keep a register of school status reports and school building plans. This register is to be available for public inspection at no charge on the website for the Department of Education and Training. Copies of the school building plans and school status reports are to also be available for public inspection on the Department's website.
4. Clause 5 requires the Director-General to prepare and submit a government school infrastructure status report at the end of each financial year. This report is to contain:
 - details of the capital infrastructure of each government school and its state of repair;
 - an assessment of works of a capital nature that need to be carried out in government schools;
 - an assessment of the progress that has been made and the amount expended in carrying out those works of a capital nature that are identified in the relevant

school building plan as capital works to be carried out during the financial year to which the report relates;

- details of the amount expended on maintenance work for each government school;
- details of the amount of any additional funding requested by a government school for urgent maintenance, the amount granted, and a statement of reasons for any refusal to grant such additional funding.

5. Clause 6 requires the Director-General to prepare and submit to the Minister a school building plan after the end of each financial year regarding building and maintenance work in government schools for the next three financial years. The plan is to contain:

- particulars of works of a capital nature that are to be carried out in government schools during the period to which the plan relates, and the estimated time and cost;
- particulars of the money to be allocated, out of the money appropriated by Parliament, to carrying out works of a capital nature and maintenance in government schools, together with the criteria by which decisions are made about the allocation of that money and how those criteria are applied.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

15. MOTOR DEALERS AMENDMENT BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Linda Burney MP
Portfolio:	Fair Trading

Purpose and Description

1. This Bill amends the *Motor Dealers Act 1974* in relation to demonstrator motor vehicles and notices of disposal of second hand motor vehicles.

Background

2. This Bill proposes changes to the record-keeping requirements for motor dealers to reduce red tape as part of the State Plan to help business by cutting the regulatory burden. The Government established a Small Business Regulation Review Taskforce in 2006 to look at a sector of the NSW economy. One of the first areas to be looked at was the motor vehicle retailing and servicing sector.
3. Under the Motor Dealers Act and regulation, dealers are required to keep a number of prescribed forms, including a variety of different registers of the vehicles they are buying, selling and transferring. The registers include information about the vehicle, its odometer reading, any defects, the vehicles identifiers and other relevant information. The data in the registers is useful for investigating consumer fraud and to prevent the trade in stolen cars and spare parts. The legislation also requires dealers to attach prescribed forms to motor vehicles to give information to consumers about the vehicles such as the vehicle details, any statutory warranty and whether they have been previously written off.
4. At present, there are 19 separate prescribed forms. This Bill will get rid of 4 of the 19 prescribed forms and reduce the use of one other form. It is proposed that, together with changes to the regulation, the total of 19 forms will be reduced to 13 forms.
5. Under the current system, dealers need to complete a form each time they transfer a vehicle to another dealer, whether they are a retailer or a wholesaler. These inter-trade dealing forms have information that helps Fair Trading and the police to trace a vehicle's history and contain information such as its odometer reading, identifiers, where it came from and who it has been on-sold to. It was found during the Taskforce, that the Roads and Traffic Authority is collecting the same information when the registration of the vehicle is transferred. This is unnecessary duplication. The Bill will abolish the need for dealers to complete inter-trade disposal forms.
6. The Bill will also change the forms prescribed for demonstrator vehicles. Currently, demonstrator vehicles need their own separate form. However, by treating them in the same way as other types of second hand vehicles, the demonstrator vehicle specific forms can be abolished. The process will be simplified for consumers and

dealers to ensure that separate arrangements only exist for used vehicles and new vehicles. The definition of a demonstrator will be kept under the Act to prevent dealers from marketing any used vehicle as a demonstrator to mislead consumers. Dealers will still access the stamp duty benefits associated with demonstrator vehicles through the Office of State Revenue.

7. The other main change will relate to warranties. The arrangements for statutory warranties for demonstrator vehicles differ from those for other used vehicles. The used vehicles currently have a statutory warranty of 3 months or 5,000 kilometres, as do the demonstrator vehicles that have travelled more than 15,000 kilometres. There are differing statutory warranty provisions for the demonstrators that have travelled less than 15,000 kilometres at the time of sale, the manufacturer's warranty is also more generous than any statutory warranty.
8. The changes will bring the record-keeping for demonstrators closer in line to other jurisdictions such as the Australian Capital Territory and Queensland. Changes to the Motor Dealers Regulation are being developed which will reduce further the forms that dealers are needed to keep. For example, the simplified register will allow dealers to indicate on the form whether title is guaranteed so only one form will be used instead of 2 forms. It is also proposed to merge 2 other forms into a single one by regulation where separate forms are used for motor vehicles that are sold without a statutory warranty (depending on whether the vehicle does not attract a warranty or it is exempted from the warranty). For consumers, the advantage is that the proposed new merged form will include information about the title of the vehicle and advice on written-off vehicles and whether a pink slip is needed, where such information is not currently contained in detail across the 2 forms.
9. The changes have been supported by the Road and Traffic Authority, the NSW Police Force, the Institute of Automotive Mechanical Engineers and the Motor Vehicle Industry Advisory Council.

The Bill

10. The object of this Bill is to amend the *Motor Dealers act 1974* (the *Principal Act*) to:
 - (a) remove the requirement that a trade owner who sells a second hand or demonstrator motor vehicle to another trade owner give the other trade owner a signed disposal notice for retention by the other trade owner,
 - (b) include a demonstrator motor vehicle within the definition of second-hand motor vehicle so that demonstrator motor vehicles are to be dealt with under the Principal Act as second-hand motor vehicles (with a specified exception).

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

Schedule 1 [1] amends the definition of second-hand motor vehicle in the Principal Act so that the definition includes a demonstrator motor vehicle.

Schedule 1 [4] amends section 24 of the Principal Act so that the distinction between demonstrator motor vehicles and second-hand motor vehicles is retained. Section 24 requires a dealer who offers or displays for sale a second-hand motor vehicle to attach

to the vehicle a notice containing certain particulars in relation to the vehicle. Such a notice can be signed and given to the purchaser at or before the time of sale if the vehicle is a demonstrator motor vehicle.

Issues Considered by the Committee

11. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

The Committee makes no further comment on this Bill.

16. NATIONAL PARKS AND WILDLIFE AMENDMENT (LEASING AND LICENSING) BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Phil Koperberg MP
Portfolio:	Climate Change, Environment and Water

Purpose and Description

1. This Bill amends the *National Parks and Wildlife Act 1974* with respect to certain commercial activities in state conservation areas, regional parks, karst conservation reserves and Aboriginal areas; the granting of leases and licences in relation to certain Aboriginal lands reserved as state conservation areas and regional parks; and for other purposes.

Background

2. This Bill aims to remove anomalies that are restricting the leasing and licensing in parks. The State Plan recognises that there are recreational and cultural benefits from the State's parks. The State Plan has as one of its environmental targets 'increasing the number of visits to State Government parks and reserves by 20 per cent by 2016'. Regulating visitor access and activities in parks forms part of good park management. Another aim of the State Plan is to increase tourism to promote business investment in NSW. A consistent framework for approving access to and use of parks is essential to meet these aims.
3. The National Parks and Wildlife Act establishes 7 categories of park, which forms the State's park system: national parks, historic sites, state conservation areas, regional parks, karst conservation reserves, Aboriginal areas and nature reserves. Each category of park is managed according to specific principles. These principles guide what activities are permitted in those areas. Nature reserves are areas predominantly in a natural condition. Their main purpose is to conserve nature, with scientific research also an important management principle. Visitation in nature reserves is carefully managed. Commercial activities are not encouraged. However, the management principles for regional parks focus on providing recreational activities.
4. The leasing and licensing provisions give a framework for managing commercial activities in parks, such as guided tours. The kinds of activities that are regulated by leases and licences include filming, food sales and organised adventure activities such as cycling, skiing and canoeing. The powers to issue licences and franchises for commercial activities are different across the various park categories. Currently, there are powers to allow the issue of licences and franchises relating to national parks and historic sites but no such express powers in relation to regional parks, state conservation areas, karst conservation reserves or Aboriginal areas. The differences

National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007

may have arisen because some new park categories were added to the Act since it was first proclaimed in 1974. This has created the anomaly where commercial activities are authorised in national parks and historic sites but may not be authorised in other park categories that are also focussing on recreation and sustainable visitor use as part of their management principles.

5. It is not proposed that the amendments will apply to nature reserves as the management principles for this category will not allow for the provision of significant visitor services.
6. Another anomaly exists in the leasing and licensing that relates to lands that are reserved under part 4A of the Act. Part 4A allows the ownership of certain public lands, existing parks, to be vested in Aboriginal land councils and then leased back to the Government on condition that those lands are managed as a park under the Act. Part 4A parks are under the control and management of the Director General of the Department of Environment and Climate Change until the board of management is appointed. Boards of management of co-managed Part 4A parks have a majority of Aboriginal membership. However, unlike most other park categories, leases and licenses to use or occupy land cannot be granted in state conservation areas and regional parks that are reserved and managed under Part 4A. Therefore, licences and leases to operate kiosks, restaurants, on park accommodation or telecommunication towers cannot be issued. All the other reserve categories under the Act, except for Aboriginal areas, can be granted licences or leases to use or occupy land. For state conservation areas and regional parks, which are intended for recreational activities, their existing leasing and licensing operations cannot be renewed, and new ones cannot be entered into once these parks are reserved and managed under Part 4A.
7. An example of this is the Government recently finalised negotiations for the hand back of land at Stockton Bight, between Newcastle and Port Stephens, to the Worimi traditional owners. Under the current legislation, leasing and licensing operations in the Worimi National Park will continue but leasing and licensing operations in the Worimi Regional Park and Worimi State Conservation Area cannot be renewed. The Bill inserts a new section to allow the Director General to issue leases and licences to occupy or use land in State conservation areas and regional parks that are reserved and managed under Part 4A.

The Bill

8. The object of this Bill is to amend the *National Parks and Wildlife Act 1974* (the *NP&W Act*) to provide that:
 - (a) licenses and franchises to carry on commercial activities may be granted in relation to lands that are state conservation areas, regional parks, karst conservation reserves or Aboriginal areas under the NP&W Act,
 - (b) leases and licences to occupy or use land may be granted in relation to Aboriginal lands reserved as state conservation areas or regional parks under Part 4A of the NP&W Act.

9. Section 81 (4) of the NP&W Act will continue to provide that, despite anything in the Act or other Act, or in any instrument made under that or any other Act, if a plan of management has been adopted under Part 5 of the NP&W Act, no operations are to be undertaken in relation to the lands to which the plan relates unless the operations are in accordance with the plan.
10. The Bill also makes a statute law revision amendment to correct incorrect references to 'proclamations' instead of 'notices' under Division 4 of Part 4A of the NP&W Act.

Issues Considered by the Committee

11. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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| <ol style="list-style-type: none">12. 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.

17. PARLIAMENTARY ELECTORATES AND ELECTIONS AMENDMENT (TRUTH IN ADVERTISING) BILL 2007*

Date Introduced: 28 June 2007
House Introduced: Legislative Assembly
Member Responsible: Donald Page MP

Purpose and Description

1. The purpose of the Bill is to amend the *Parliamentary Electorates and Elections Act 1912* to provide for truth in political advertising in State and local government elections.

Background

2. It was noted in the Agreement in Principle speech that:

The law as it stands in New South Wales allows people to seek and obtain political office and power through political advertising that can be totally fraudulent. This lax attitude to truthfulness fosters a culture that deception is simply part of the political game, rather than a serious attack on the integrity of the political system. It is imperative that we restore the public's faith in the accuracy of political advertising because people in a democracy are entitled to expect honesty and accuracy from their leaders. If the integrity of our political system is to be assured, it is essential that information provided to voters in determining their decision about voting not be inaccurate or misleading.¹³

The Bill

3. The Bill proposes to insert s 151AA into the *Parliamentary Electorates and Elections Act 1912* to prohibit the publication of an electoral advertisement (in relation to State and local government elections) that contains a statement purporting to be fact but is inaccurate and misleading to a material extent. It applies to advertisements published by means of radio, television or the internet. The person who authorised, caused or permitted such publication is deemed to be guilty of an offence. The maximum penalty for such an offence is 1000 penalty units for a body corporate and 100 penalty units for individuals.
4. Proposed s 151AA(3) provides for a defence if it can be established that the defendant:

(a) took no part in determining the content of the advertisement, and

¹³ D L Page MP, Legislative Assembly *Hansard*, 28 June 2007.

- (b) could not reasonably be expected to have known that the statement was inaccurate and misleading.
5. The Electoral Commissioner is empowered to request the advertiser to withdraw a misleading electoral advertisement from further publication and/or to publish a retraction in specified terms and in a specified manner and form.

Issues Considered by the Committee

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

Issue: Strict liability – Schedule 1

6. The offence of authorising, causing or permitting the publication of a misleading electoral advertisement imposed by proposed s 151AA is one of strict liability. The prosecutor is thus not required to prove that the person had the requisite criminal intent, merely that the act was committed. Imposing strict liability is contrary to the fundamental right to be presumed innocent until proven guilty. Article 14(2) of the *International Covenant on Civil and Political Rights* provides that: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.
7. However, the imposition of strict liability will not always unduly trespass on personal rights and liberties. It is relevant to consider: the impact of the offence on the community; the penalty that may be imposed; and the availability of any defences or safeguards.¹⁴
8. The Committee notes that proposed s 151AA(3) provides a defence where the defendant took no part in determining the content of the advertisement and could not reasonably be expected to have known that the statement was inaccurate and misleading.
9. The penalty that may be imposed is monetary only, and does not threaten the offender with imprisonment.
10. The Committee further notes that the intention of the Bill is to protect the public interest by ensuring that the decision of voters is based on accurate information.

- 11. The Committee concludes that given that s 151AA includes a defence, imposes a monetary penalty only, and is designed to protect the public interest in upholding the integrity of the electoral process in NSW, the imposition of strict liability does not unduly trespass on personal rights and liberties.**

The Committee makes no further comment on this Bill.

¹⁴ Legislation Review Committee, *Strict and Absolute Liability: Responses to the Discussion Paper*, Report No 6, 17 October 2006, p 4.

18. PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (WASTE) BILL 2007

Date Introduced:	19 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Verity Firth MP
Portfolio:	Women, Assisting Minister for Climate Change, Environment and Water (Environment)

Purpose and Description

1. This Bill amends the *Protection of the Environment Operations Act 1997* with respect to the contributions payable for liquid waste received at waste facilities.

Background

2. This Bill extends the existing waste and environment levy to liquid waste disposal. The waste and environment levy is an economic tool to drive waste avoidance, and promote resource recovery and recycling. Waste disposed to landfill has reduced on a per capita basis since 2000. In 2000, it was 1,201 kilograms per person and in 2006, it was 1,131 kilograms per person. This Bill aims to make disposal to landfill more costly. This levy is also a key element in providing funding for the Government's City and Country Environment Restoration Program.
3. Currently, the waste and environment levy is only paid on the disposal of solid waste to landfill. Waste facilities that transport waste to another place for reuse may claim a deduction from the levy. The levy then provides the financial incentive for industry to look at resource recovery options. However, at present, there is no equivalent incentive for recovering resources from liquid waste.
4. The levy will commence at \$38.60 per tonne and increase annually to 2010-11. The proposed commencement date of this Bill is 1 August 2007, but the Honourable Penny Sharpe, Parliamentary Secretary and member of the Legislative Council, has stated in her second reading of the Bill that the proposed levy will have a new start date on 1 October 2007.
5. The liquid waste levy will only be paid on liquid wastes that are required to be 'tracked' in NSW as agreed under the National Environment Protection Measure. The Bill provides for deductions from the levy where liquid waste is transported to another place for legitimate reuse, such as, the recovery of grey water for industrial and agricultural use, and the recovery of other resources such as acids, oils and solvents.

6. The Bill aims to discourage liquid wastes from being excessively stockpiled or stored across NSW. The levy is paid on receipt of wastes, deductions are also given when that waste is sent off site for legitimate recovery, recycling, processing or disposal.
7. The proposed levy on liquid waste disposal aims to: provide a financial incentive to reduce the generation of liquid wastes; provide a financial incentive to make hazardous liquid wastes that re being stockpiled on site to be moved out of storage and to an appropriate facility for treatment; provide a financial incentive for the development of treatment technologies and markets to facilitate reuse and recycling.

The Bill

8. The object of this Bill is to extend the contribution payable under section 88 of the *Protection of the Environment Operations Act 1997* to certain types of liquid waste received at waste facilities.
9. Clause 2 provides for the commencement of the proposed Act on 1 August 2007.
10. Proposed schedule 1 [1] amends section 88 of the *Protection of the Environment Operations Act 1997* to require contributions to be paid under that section by an occupier of a waste facility in respect of liquid waste received at the facility. Proposed schedule 1 [2] clarifies the facilities required to pay the contribution. Proposed schedule 1 [3] defines liquid waste.

Issues Considered by the Committee

11. The Committee notes that as the Bill's second reading in the Legislative Council has indicated that the commencement date will be changed from 1 August to 1 October 2007, to allow for sufficient time for industry to prepare for the proposed levy, there are no other issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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| <ol style="list-style-type: none">12. 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.

19. RENEWABLE ENERGY (NEW SOUTH WALES) BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Phil Koperberg MP
Portfolio:	Climate Change, Environment and Water

Purpose and Description

1. The purpose of the Bill is to establish a mandatory renewable energy target in relation to the consumption of electricity in NSW.

Background

2. The Bill was introduced as one of a number of policy initiatives in NSW developed in response to climate change. The NSW Greenhouse Gas Reduction Scheme was implemented in 2003. Other policies include the Building Sustainability Index, Energy Savings Action Plans and Energy Savings Funds, Green Power and the Climate Change Fund.¹⁵ In November 2006, Premier Iemma announced the following renewable energy targets for NSW:
 - 10% of NSW electricity consumption by 2010; and
 - 15% of NSW electricity consumption by 2020.
3. The Bill follows the form and structure of the Victorian renewable energy scheme, which was implemented under the *Victorian Renewable Energy Act 2006* (Vic). It is designed to be as consistent as possible with the Victorian scheme to minimise compliance costs.¹⁶ It is also similar in principle to the Commonwealth renewable energy scheme implemented under the *Renewable Energy (Electricity) Act 2000* (Cth).
4. A supporting information paper, to which the NSW Government has invited comment, accompanies the Bill. Submissions on the information paper and aspects of the Bill were to be made by 27 July 2007.

The Bill

5. The objects of the Bill as set out in cl 4 are:
 - (a) to establish a mandatory renewable energy target in relation to all electricity consumed in New South Wales, and

¹⁵ Hon P C Koperberg MP, Legislative Assembly *Hansard*, 27 June 2007.

¹⁶ NSW Department of Water and Energy, *NSW Renewable Energy Target: Renewable Energy (New South Wales) Bill 2007 and Supporting Information*, June 2007, p 4.

- (b) to increase the consumption of renewable energy in New South Wales which will reduce the greenhouse gas emissions associated with the production and use of electricity, and
 - (c) to encourage improvement in the renewable energy industry's capacity to provide renewable energy at a more competitive price.
6. Clause 5 serves as an explanatory section and outlines the renewable energy target scheme as follows:
- (i) ...This Act closely follows the form and structure of the Victorian renewable energy scheme implemented under the *Victorian Renewable Energy Act 2006* of Victoria and is similar in principle to the Commonwealth renewable energy scheme implemented under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth.
 - (ii) The scheme facilitates the operation of a renewable energy market based on tradeable renewable energy certificates created and sold by persons who generate electricity using renewable energy sources.
 - (iii) Certain persons who acquire electricity from the national electricity market for use in New South Wales or who generate electricity for their own use or for retail supply in New South Wales will be required to acquire a certain percentage of electricity from renewable energy sources each year.
 - (iv) To comply with that renewable energy target, it is necessary to surrender certificates that are created by energy generators that generate electricity using renewable energy sources (such as hydro, wind and solar). If a power station generates electricity using renewable energy sources, the power station must be accredited under the Act before certificates can be created in relation to the generation of the electricity. A simplified procedure applies in relation to small generation units that use renewable energy sources.
 - (v) Failure to surrender sufficient certificates to meet a target may result in the imposition of a penalty.
7. Part 2 of the Bill is concerned with renewable energy certificates – with registration, the accreditation of power stations and creation of certificates, amongst other things. Clause 22 specifies that the following are eligible renewable energy sources:
- (a) hydro
 - (b) wave
 - (c) tide
 - (d) ocean
 - (e) wind
 - (f) solar (other than solar energy used in a device primarily for heating water)
 - (g) geothermal-aquifer
 - (h) hot dry rock
 - (i) energy crops
 - (j) wood waste

- (k) agricultural waste
- (l) waste from processing of agricultural products
- (m) food waste
- (n) food processing waste
- (o) bagasse
- (p) black liquor
- (q) biomass-based components of municipal solid waste
- (r) landfill gas
- (s) sewage gas and biomass-based components of sewage
- (t) any other energy source specified by the regulations.

8. Part 3 of the Bill contains provisions relevant to the acquisition of electricity and renewable energy certificate shortfalls are covered in Part 4. A civil penalty applies should a relevant entity have a renewable energy certificate shortfall for a year in which it makes a scheme acquisition: cl 62. The Supporting Information Paper notes that:

It is proposed that compliance with the scheme be encouraged by applying a penalty in the event that a relevant entity has insufficient certificates to meet its target. The penalty level would also effectively cap the cost of compliance and provide certainty to investors about the maximum costs of the scheme.

The level of the penalty needs to be set at least as high as the marginal cost of compliance (which will determine certificate prices), taking into account any transaction costs associated with compliance. If the penalty were lower than this, then it would be cheaper for the relevant entity to pay the penalty rather than comply. This would limit the effectiveness of the scheme in driving investment in renewable energy and reducing greenhouse emissions.¹⁷

9. The requirements in relation to energy acquisition statements and the surrender of certificates can be found in Part 5 and civil enforcement is provided for in Part 6.
10. Part 7 allows for the review of decisions by the Scheme Administrator, whose role is established by Part 8.
11. The Scheme Administrator is to maintain the following registers as identified in Part 9:
- the register of registered persons;
 - the register of accredited power stations;
 - the register of renewable energy certificates;

¹⁷ NSW Department of Water and Energy, *NSW Renewable Energy Target: Renewable Energy (New South Wales) Bill 2007 and Supporting Information*, June 2007, p 16-17.

- the register of applications for accredited power stations.
12. The information gathering powers of the Scheme Administrator are located in Part 10.
 13. Part 11 sets out the powers of authorised officers. Clause 90 enables the Scheme Administrator to appoint any of the following persons as an authorised officer: an employee of the Scheme Administrator; a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*; any other person employed by the State; or any other person who the Scheme Administrator considers has appropriate skills, qualifications and experience. An authorised officer may enter any premises at any reasonable time and exercise monitoring powers as set out in cl 97 (cl 93). An authorised officer is also empowered to ask questions and seek production of documents (clauses 98 and 99). These powers are only to be exercised to the extent reasonably necessary for substantiating information that has been provided under the Bill or for determining whether compliance has occurred.
 14. Part 12 provides for confidentiality. It prohibits a person from disclosing any confidential or commercially-sensitive information obtained during the exercise of a power or the performance of a function and also prohibits the use of such information to obtain a pecuniary or other advantage: cl 105. Some exceptions apply.
 15. General provisions are located in Part 13. Clauses 107 to 109 provide for a number of general offences including the provision of false or misleading information and failing to provide documents as required by the Act.
 16. Clause 113 establishes that the Minister may make scheme rules so long as they are consistent with the Act and regulations. The rules may, amongst other things, be in relation to:
 - eligibility of relevant power stations for accreditation;
 - eligible renewable energy sources;
 - the amount of energy generated by an accredited power station including in respect of pre-scheme capacity and scheme capacity;
 - electricity generation returns and the audit of those returns;
 - scheme acquisitions;
 - annual energy acquisition statements and the audit of those statements; and
 - records to be kept by registered persons and relevant entities.

The public must have a reasonable opportunity to comment on any draft rules. Notice of a rule is to be tabled in Parliament and may be disallowed by resolution of either House of Parliament.

17. An offence under the Bill or regulations may be dealt with summarily by a Local Court or the Supreme Court in its summary jurisdiction.
18. The Scheme is to be reviewed five years after the date of assent.

Issues Considered by the Committee

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

Issue: Strict liability – clauses 38, 86, 105, 108 and 114

19. Clause 38 provides that it is an offence for a person to create a certificate if he or she is not entitled to create a certificate. The offence is one of strict liability.
20. Imposing strict liability is often seen as contrary to the fundamental right to be presumed innocent until proven guilty as a person is presumed to have committed the offence irrespective of their intention. Article 14(2) of the *International Covenant on Civil and Political Rights* provides that: 'Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.
21. However, the imposition of strict liability will not always unduly trespass on personal rights and liberties. It may be relevant to consider: the impact of the offence on the community; the penalty that may be imposed; and the availability of any defences or safeguards.¹⁸
22. There is a strong public interest in ensuring that the Bill is complied with and that certificates are not improperly created. The scheme established by the Bill is to be market-based. The improper creation of certificates could result in the obtaining of an unfair advantage in that market.
23. The maximum penalty that may be imposed for conviction of a cl 38 offence is 240 penalty units in the case of a body corporate and 60 penalty units in the case of an individual. However, cl 74 empowers the Scheme Administrator to order a person found guilty of an offence under cl 38 to surrender the number of certificates equivalent to the number of certificates created in contravention of cl 38 and registered under the Act. The Scheme Administrator may also suspend the registration of a registered person for a period of no more than two years as considered appropriate in all of the circumstances by the Scheme Administrator (cl 46). There is no limit to the period of suspension of registration that may be imposed if it is not the first time a person is convicted of an offence under cl 38 and his or her registration has previously been suspended. The decision to suspend registration under cl 46 is a reviewable decision (cl 75).
24. Clause 86 provides that a person is not to fail to comply with a notice issued by the Scheme Administrator to give certain information and provide specified documents. A maximum penalty of 240 penalty units applies in the case of a body corporate and 60 penalty units in the case of an individual. However, a defence of reasonable excuse is provided which includes a protection against self-incrimination in certain circumstances. Similar arrangements apply to a failure to answer a question or produce a document as required by an authorised officer in the exercise of a search warrant: cl 100.
25. Clause 105 prohibits a person disclosing any confidential or commercially-sensitive information obtained during the exercise of a power or the performance of a function

¹⁸ Legislation Review Committee, *Strict and Absolute Liability: Responses to the Discussion Paper*, Report No 6, 17 October 2006, p 4.

(maximum penalty: 60 penalty units), nor must a person use such information to obtain a pecuniary or other advantage (maximum penalty: 120 penalty units). However, a number of exceptions are included namely:

- the disclosure or use is made in the exercise of a power or the performance of a function under the Bill;
- the person who supplied the information consented;
- the disclosure or use is made in legal proceedings at the direction of the court; or
- the information is in the public domain.

26. Clause 108 provides that a person required by the Bill to provide a document to the Scheme Administrator by a specified time or date must not fail to do so. A maximum penalty of 240 penalty units applies in the case of a body corporate and 60 penalty units in the case of an individual. However, a defence of reasonable excuse is provided.

27. Clause 114 prohibits a relevant entity that enters into an arrangement with a trade exposed electricity intensive user for the supply of electricity to require the trade exposed electricity intensive user to contribute to any of the relevant entity's costs of meeting their obligations under the Bill. A maximum penalty of 240 penalty units applies in the case of a body corporate and 60 penalty units in the case of an individual.

28. The Committee recognises that the proposed scheme is to be market-based. Given the strong public interest in ensuring that certificates are only created by those entitled to do so, that individuals and entities comply with the terms of the scheme and not acquire an unfair advantage, and that the maximum penalties applicable do not involve a term of imprisonment, the Committee considers that the imposition of strict liability does not unduly trespass on personal rights and liberties.

Issue: Powers of authorised officers

29. Division 2 of Part 11 of the Bill sets out a number of powers that may be exercised by authorised officers. An authorised officer may exercise the following powers:

- **enter any premises at any reasonable time** and exercise monitoring powers (cl 93);
- **monitoring powers** (cl 97) include the power to:
 - search the premises for any thing on the premises that may relate to the creation or transfer of certificates or scheme acquisitions;
 - examine any activity conducted, and any thing, on the premises that may relate to information provided for the purposes of the Act;
 - take photographs or make video or audio recordings or sketches;

- inspect any document provided for the purposes of the Act and take extracts from or make copies of such document;
- take on to the premises equipment and materials necessary for exercising powers; and
- secure a thing found that the authorised officer believes on reasonable grounds is evidence of the commission of an offence against the Act and would be lost, destroyed or tampered with before a warrant could be obtained.

It includes the power to operate equipment at the premises to see whether it contains relevant information.

- **powers to ask questions and seek production of documents:** clauses 98 and 99. It is an offence for a person, without reasonable excuse, to fail to answer a question or produce a document required by an authorised officer: cl 100. However, protection against self-incrimination is provided by cl 101.

30. These powers are extensive and the power of entry could raise a concern in relation to trespassing on the right to privacy and the right to enjoy property without undue interference. However, the Bill includes a number of limitations. Powers may be exercised 'only to the extent that it is reasonably necessary to do so for substantiating information provided under this Act or for determining whether this Act has been complied with'. The authorised officer is also required to 'cause as little inconvenience as possible, and not remain on premises any longer than is reasonably necessary': cl 92. The power of entry must be exercised at a reasonable time and whilst the authorised officer may enter any premises, consent from the occupier must be obtained in the case of business premises, otherwise the entry is to be made under a search warrant: cl 93.
31. Whilst the range of people that may be appointed as authorised officers is very broad (they may be an employee of the Scheme Administrator, a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*, any other person employed by the State, or any other person who the Scheme Administrator considers has appropriate skills, qualifications and experience) the Bill does contain a safeguard in that a person must not be appointed unless the Scheme Administrator is satisfied that he or she has the appropriate skills, qualifications and experience.
32. The extent of powers granted to authorised officers should also be considered in light of the public interest in ensuring compliance with the Bill.

- 33. The Committee recognises the public interest in ensuring compliance with the Bill. Given that the power to enter premises to exercise various monitoring powers is balanced by a requirement that such entry be at a reasonable time, is to cause as little inconvenience as possible, must be by consent in the case of business premises or else by warrant, and that only persons with the appropriate skills, qualifications and experience may be appointed authorised officers, the Committee does not consider that the rights to privacy and enjoyment of property are unduly trespassed.**

Issue: Retrospectivity – Schedule 3

34. Schedule 3 to the Bill provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Bill. These provisions may take effect from the date of assent or a later date and may thus have retrospective application. However, the Bill specifies that in such a case the provisions are not to operate so as to prejudicially affect the rights of a person as existed prior to publication of the provision, nor are they to impose liabilities regarding actions or omissions prior to publication.

35. The Committee concludes that the potential for retrospective application of regulations made in accordance with Schedule 3 does not unduly trespass on personal rights and liberties.

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Commencement

36. The Bill is to commence on proclamation: cl 2. The Committee will normally be concerned if a Bill provides for commencement following proclamation rather than on assent as it delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, the Bill specifies that the latest date for commencement is 1 January 2008.

37. The Committee concludes that the Bill does not inappropriately delegate legislative powers by providing that it is to commence following proclamation rather than on assent as it specifies that the latest date for commencement is 1 January 2008.

The Committee makes no further comment on this Bill.

20. ROYAL REHABILITATION CENTRE SYDNEY SITE PROTECTION BILL 2007*

Date Introduced:	28 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Private Member – Mr Anthony Roberts, MP; Member for Lane Cove; Member of Liberal Party
Portfolio:	Private Member; Member for Lane Cove

Purpose and Description

1. This Bill makes Ryde City Council the consent authority for any development on the site at Putney known as the Royal Rehabilitation Centre – Sydney, to prohibit excessive development on the site, to ensure that satisfactory, alternative arrangements are made for users, including the Riding for the Disabled, and for other purposes.

Background

2. This Bill aims to protect the site of the Royal Rehabilitation Centre Sydney at Putney by ensuring that the City of Ryde Council remains the consent authority. About 41 vulnerable residents have lived in Weemala. Some are in wheelchairs but some are also confined to bed as a result of various spinal and brain injuries. They will be transferred out of their home and sent to community housing even though some have lived on the site for up to 50 years.
3. The site was originally set up as the Home for the Incurables and was given to a board to ensure that these residents would be looked after. In its place, the approved development to take place will be 800 units to be built on the site.
4. The Prime Minister has already written to the Minister for Planning to raise the concerns of the residents in response to the proposed development of the site, where the plan was approved by the Minister for Planning in March 2006 to develop up to 800 dwellings on 16 hectares of residual land on the site.
5. Ryde City Council has suggested to the Minister for Planning to channel ingress and egress traffic onto Victoria Road, not Charles Street or Morrison Road as traffic flows on Morrison Road are already 300% above the Roads and Traffic Authority's guidelines.

The Bill

6. The object of this Bill is to protect the site of the Royal Rehabilitation Centre – Sydney at Putney by:

- (a) ensuring that Ryde City Council remains the consent authority for any application to carry out development on the site, and
- (b) prohibiting the carrying out of excessive development on the site, and
- (c) ensuring that satisfactory alternative arrangements are made for users of the site displaced by any development, including the Riding for the Disabled Association, and
- (d) reserving part of the site as public open space, and
- (e) requiring community consultation in relation to the carrying out of development on the site and the management of that public open space.

Part 2 looks at provisions to make Ryde City Council the consent authority. Part 3 deals with provisions on consent required for the development of the site. Part 4 covers the provisions to protect existing buildings. Part 5 includes provisions on the reservation of certain land as public open space. Part 6 contains provisions for the concept plan for the site. Part 7 addresses community consultation provisions. Part 8 deals with miscellaneous provisions including the making of regulations.

Issues Considered by the Committee

7. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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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.

21. SECURITY INDUSTRY AMENDMENT (PATRON PROTECTION) BILL 2007*

Date Introduced: 7 June 2007
House Introduced: Legislative Council
Member Responsible: Rev the Hon Dr Gordon Moyes MLC

Purpose and Description

1. The purpose of the Bill is to amend the *Security Industry Act 1997* to introduce new measures (including random drug and alcohol testing of bouncers and crowd controllers) to protect patrons of licensed venues. The Bill also provides for further regulation of persons in the security industry and security activities.

Background

2. According to the Second Reading speech, the Bill was introduced to increase the safety and security of patrons in hotels and nightclubs. It seeks to do this by:¹⁹
 - ensuring that crowd controllers are not under the influence of drugs or alcohol while working;
 - reducing the prevalence of drug trading in nightclubs and hotels;
 - facilitating increased reporting of assaults by crowd controllers to police and the Security Industry Registry;
 - increasing the accountability of crowd controllers regarding violent and criminal conduct whilst on duty;
 - ensuring that crowd controllers are part of the solution to violence in licensed premises; and
 - ensuring that master licence holders act in accordance with the principles of fair trading.
3. A discussion paper prepared by the Australasian Centre for Policing Research noted the results of a UK study of crowd controllers which found that assaults perpetrated by crowd controllers were under-reported as a result of:²⁰
 - the perceived low conviction rates of crowd controllers involved in these assaults;

¹⁹ Rev the Hon Dr G K M Moyes MLC, Legislative Council *Hansard*, 7 June 2007.

²⁰ Roger Nicholas, *The antecedents of alcohol related violence in and around licensed premises*, Australasian Centre for Policing Research, March 2004, p 7.

- difficulties associated with the identification of the assailant;
 - difficulties with the victims obtaining corroborating evidence;
 - the perceived risk of physical intimidation by the crowd controllers in the future;
 - a perception that reporting crowd controllers to police would lead to the victims being banned from licensed premises in the future;
 - police decisions concerning whether to proceed with assault charges being influenced by the recognition that they (the police) also have to deal with the same abuse and behaviour that crowd controllers have to deal with;
 - a 'code of silence' or collusion that is intrinsic to the culture of crowd controllers, which renders police investigations problematic; and
 - delays between the alleged assaults and the interviewing of crowd controllers by police that facilitate collusion between crowd controllers.
4. The Bill was developed in close consultation with the Australian Security Industry Association, the Institute of Security Executives and the Building Services Contractors Association of Australia.

The Bill

5. The Bill proposes to amend s 15 of the *Security Industry Act 1997* to require the Commissioner to refuse to grant a licence if the applicant has not provided a statement by a medical practitioner that certifies he or she is physically and psychologically fit to carry on security activities of the kind authorised by the licence. It requires the applicant to disclose to the medical practitioner any relevant medical, psychiatric or psychological condition from the last five years. It also enables the Commissioner to have regard to, in relation to the applicant, any information regarding: investigations, law enforcement, assessment of complaints, licensing or disciplinary matters; probity assessments and reference checks concerning persons who provide goods or services to consumers; and any other information affecting the interests of consumers.
6. The Bill makes a number of amendments to alter the sizing requirements of details that appear on a licence and the way in which the licence is worn.
7. A licence may be revoked should:
- the licensee refuse or fail to: undergo a breath test; submit a breath analysis; or provide a sample of urine or hair as required;
 - the results of a test indicate that the prescribed concentration of alcohol was present in the licensee's blood whilst conducting security activities;
 - the results of a test indicate that the licensee has used a prohibited drug;
 - the licensee failed to disclose a relevant medical, psychiatric or psychological condition to a medical practitioner when obtaining a statement to accompany an application for certain classes of licence.

8. The Bill proposes to insert Division 3A to provide for the testing of crowd and venue controllers and bouncers for alcohol and prohibited drugs. It empowers a police officer to require a licensee to undergo a breath test or submit a breath analysis for the purpose of testing for the presence of alcohol, or to provide a urine or hair sample for the purpose of testing for the presence of prohibited drugs. The selection of a licensee for testing may be random or targeted. It is an offence for the licensee to interfere with the results of the test.
9. The Bill is to commence three months after the date of assent unless commenced sooner by proclamation.

Issues Considered by the Committee

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

Issue: Privacy – Schedule 1[5]

10. Drug and alcohol testing procedures are invasive, particularly breath analysis, and the collection of urine and hair samples. The Bill does not enable consent to testing or the collection of samples to be freely given as refusing or failing to undergo a test may result in the revocation of one's licence. The Bill accordingly raises concerns regarding the invasion of privacy.
11. The right to privacy is well-recognised. Article 17 of the *International Covenant on Civil and Political Rights* provides that:
 - (i) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
 - (ii) Everyone has the right to the protection of the law against such interference or attacks.
12. The relationship between issues of privacy and workplace drug and alcohol testing was considered by the Privacy Committee of NSW in its 1992 report.²¹ It concluded that workplace drug testing is not justified unless it can be shown that the benefits to be gained outweigh the interests of privacy. However, it recognised that in some circumstances workplace safety is of such concern that drug testing may be justified.
13. The Privacy Committee made the following recommendation:²²

Workplace drug testing should be prohibited by legislation other than when:

 - (i) a person's impairment by drugs would pose a substantial and demonstrable safety risk to that person or to other people;
 - (ii) there is reasonable cause to believe that the person to be tested may be impaired by drugs; and

²¹ The Privacy Committee of New South Wales, *Drug Testing in the Workplace*, No 64, October 1992.
²² Recommendation 2.

- (iii) the form of drug testing to be used is capable of identifying the presence of a drug at concentrations which may be capable of causing impairment.
14. The Privacy Committee concluded that random testing is 'the most privacy invasive form of drug testing... It is intrusive, unfair, and unjustified'.²³ The Committee was particularly concerned about the way in which random testing overturns the presumption of innocence.
15. Proposed s 28B(2) of the Bill allows a police officer to select a licensee for testing on a random basis. The Bill does not require the officer to believe on reasonable grounds that the person may be impaired by drugs or alcohol.
16. However, the Committee notes that the purpose of the Bill is to increase the safety of patrons and avoid situations where bouncers and crowd controllers act violently or unreasonably because their judgement is impaired by drugs or alcohol. That a person is under the influence of drugs or alcohol may not always be obvious.
17. The Committee further notes that various sectors of the workforce in NSW are already subject to drug or alcohol testing notably police officers, defence personnel, pilots, and train, ferry and bus drivers.

- 18. The Committee notes the importance of protecting a person's right to privacy. It acknowledges that drug and alcohol testing can involve invasive procedures. The Committee further notes that random drug and alcohol testing is particularly invasive.**
- 19. However, there may be situations when the need to protect the safety of others justifies such an invasion. There is a public interest in ensuring that crowd and venue controllers and bouncers are not under the influence of drugs or alcohol whilst working.**
- 20. The Committee notes that the procedures involved in the testing of, and collection of samples from, crowd and venue controllers and bouncers are provided for in the Bill. Only police officers are authorised to require such tests.**
- 21. It also notes that drug and alcohol testing of workers in some other industries already occurs.**
- 22. The Committee thus concludes that individual rights and liberties are not unduly trespassed.**

The Committee makes no further comment on this Bill.

²³ The Privacy Committee of New South Wales, *Drug Testing in the Workplace*, No 64, October 1992, p 29.

22. STANDARD TIME AMENDMENT (DAYLIGHT SAVING) BILL 2007

Date Introduced:	27 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

Purpose and Description

1. This Bill amends the *Standard Time Act 1987* to extend the daylight saving period from the first Sunday in October to the first Sunday in April; and for other purposes.

Background

2. After consultation with Victoria, NSW, South Australia, Tasmania and the ACT, an agreement on harmonisation and extending daylight savings arrangements from April 2008 was reached. NSW is the first to introduce this legislation to give effect to the agreement.
3. Harmonisation of daylight savings arrangements among the south-eastern jurisdictions will reduce confusion about when daylight saving starts and ends. It will also give more daylight leisure hours after school and work, including outdoor activities and sport. Harmonisation aims to give benefits to business around Australia by reducing the regulatory burden and providing greater certainty. It will also mean new opportunities for retail, hospitality, sport and tourism.
4. The proposed new arrangements will be phased in, with 2007 remaining unaffected.
5. The current start and finish dates for daylight saving in NSW, Victoria, the ACT and South Australia are aligned. At present, daylight saving in Tasmania and New Zealand starts earlier, on the first Sunday in October each year. Western Australia introduced daylight saving for the first time in 2006 for a three-year trial. A referendum will be held in 2009 to decide whether Western Australia will keep daylight saving and align its start and finish dates with south-eastern Australia.

The Bill

6. The object of this Bill is to extend the daylight saving period for it to start on the first Sunday in October (rather than the last Sunday in October) and end on the first Sunday in April (rather than the last Sunday in March) in the following year. The Bill also provides for transitional arrangement that the next daylight saving period will start on 28 October 2007 (with existing arrangements) and end on 6 April 2008 (with the proposed new arrangements).

Issues Considered by the Committee

7. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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

The Committee makes no further comment on this Bill.

23. SUPERANNUATION LEGISLATION AMENDMENT BILL 2007

Date Introduced:	8 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Transport and Finance

The Bill passed all stages of Parliament on 27 June 2007. Under s 8A(2), 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 purpose of the Bill is amend the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987* to enable members of the State Superannuation Scheme to pay compulsory employee superannuation contributions by way of salary sacrifice. The Bill also proposes to amend the *Superannuation Administration Act 1996* regarding the provision of indemnities by the SAS Trustee Corporation.

Background

2. Members of the State Superannuation Scheme can currently only pay their compulsory contributions from their after-tax salary. Amendments were passed by NSW Parliament in 2006 (commenced on 1 April 2007) to enable members of the State Authorities Superannuation Scheme to pay their compulsory contributions from pre-tax salary. The Bill proposes to extend these arrangements to members of the State Superannuation Scheme.

The Bill

3. The Bill proposes to amend the *Superannuation Act 1916* which establishes the State Superannuation Scheme, to permit members of that scheme to have compulsory employee contributions paid by employers on a salary sacrifice basis.
4. It also proposes to amend the *Superannuation Administration Act 1996* to require written Ministerial approval for the indemnification of certain officers: proposed s 80A.
5. Schedule 2 of the Bill proposes to amend the *State Authorities Superannuation Act 1987*. It amends s 30A(5) and (6) to clarify that the deferred benefit of a contributor who is an executive officer may elect to no longer contribute to the State Authorities Superannuation Scheme and accordingly have his or her benefit paid to the First State Superannuation Fund, another superannuation fund, a complying approved deposit fund or a retirement savins account. The Bill proposes to make similar amendments to s 20AB of the *Superannuation Act 1916*: schedule 3[5] and [6].

These amendments are designed to avoid the current provisions being misinterpreted to mean that executive officers must cease employment before benefits can be transferred.²⁴

6. It also makes other minor and consequential amendments to those Acts and the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987*.

Issues Considered by the Committee

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| <ol style="list-style-type: none">7. 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.

²⁴ Mr M J Daley MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 8 June 2007.

24. TRANSPORT (SAFETY AND TRAFFIC MANAGEMENT) AMENDMENT (ALCOHOL) BILL 2007*

Date Introduced:	28 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Private Member – Mr Geoff Provest, MP; Member for Tweed, Member of The Nationals
Portfolio:	Private Member; Member for Tweed

Purpose and Description

1. This Bill amends the *Road Transport (Safety and Traffic Management) Act 1999* to prohibit provisional license holders from another State or a Territory from driving in NSW with any alcohol present in their blood, consistent with the prohibition applicable to provisional license holders from NSW; and for related purposes.

Background

2. This Bill aims to amend road safety legislation that specifies a zero blood alcohol level for interstate P-plate drivers on NSW roads. It is introduced by a private member, Mr Geoff Provest, the Member for Tweed and a member of The Nationals.
3. In 2004, the NSW Government introduced the Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill, which provided that NSW P-plate drivers must comply to a zero blood alcohol level. However, it contained no blood alcohol level provisions for interstate P-plate drivers.
4. The Tweed electorate has a border line that divides the middle of the road into the border between NSW and Queensland, which causes problems in differences including road safety, traffic legislation or building codes. This issue is not confined to the NSW-Queensland State border, it is also being experienced on the NSW-Victorian State border. In Albury, a P-plate driver from Victoria was not charged for drink driving on NSW roads.
5. Queensland and Victoria have identified similar cross-border issues and have passed legislation in 2006 to address the cross-border P-plate drivers' issue.

The Bill

6. The object of this bill is to amend the *Road Transport (Safety and Traffic Management) Act 1999* to extend the current prohibition on learner and provisional licence holders driving or attempting to drive with any alcohol present in their blood to provisional licence holders from another State or Territory when driving in NSW.

7. The effect of the amendments made by the proposed Schedule 1 [1], [2] and [3] is to extend the offence (and related provisions) to provisional licence holders from another State or a Territory when driving in NSW. Currently, section 9 (1A) of the *Road Transport (Safety and Traffic Management) Act 1999* makes it an offence for holders of a learner licence or of a provisional licence issued under the *Road Transport (Driver Licensing) Act 1998*, to drive or attempt to drive a motor vehicle while there is present in their blood the novice range prescribed concentration of alcohol (being a concentration of more than zero grammes, but less than 0.02 grammes, of alcohol in 100 millilitres of blood).

Issues Considered by the Committee

8. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

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| <p>9. 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.

25. UNIVERSITY OF TECHNOLOGY (KURING-GAI CAMPUS) BILL 2007*

Date Introduced: 28 June 2007
House Introduced: Legislative Assembly
Member Responsible: Barry O'Farrell MP

Purpose and Description

1. The purpose of the Bill is to ensure that the Kuring-gai Campus of the University of Technology, Sydney is retained for educational purposes.

Background

2. The history of the site of the Kuring-gai campus was outlined in the Agreement in Principle speech.²⁵ It was purchased by the NSW Government in 1961 for the purpose of public instruction. William Balmain Teachers College opened in 1971 before changing into the Kuring-gai College of Advanced Education in 1974. The University of Technology, Sydney (UTS) was established in 1990 with the Kuring-gai College of Advanced Education becoming its Kuring-gai campus. The transfer of the land to UTS was completed in exchange for one dollar.

The Bill

3. Clause 4 of the Bill provides that the Kuring-gai Campus cannot be lawfully sold, leased, mortgaged, charged or otherwise alienated or encumbered except as provided by the Bill. A transfer or sale to a statutory body representing the Crown is not prevented if that body is subject to the direction and control of the Minister and it is a condition of the transfer or sale that the Campus continue to be solely used for educational purposes. The Campus may also be leased or a licence granted to occupy if the Minister has provided prior written approval and it is a condition that the premises continue to be used solely for educational purposes.
4. 'Educational purposes' are defined in clause 3 of the Bill as including 'purposes that are incidental or ancillary to the provision of education, including, without limitation, the provision of residential accommodation for students'.
5. Development controls are imposed by clause 5 so that development may only be carried out for the purpose of facilities for educational purposes. The local council is to be the consent authority regarding any development application. Development of the campus cannot be made a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies.
6. The Minister is empowered under clause 6 to acquire the Kuring-gai Campus by compulsory process. The land is subsequently to be vested in the Minister and freed

²⁵ B R O'Farrell MP, Legislative Assembly *Hansard*, 28 June 2007.

and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land. Application of the *Land Acquisition (Just Terms Compensation) Act 1991* is excluded.

Issues Considered by the Committee

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

Issue: Acquisition of land not on just terms – Clause 6

7. Clause 6 of the Bill proposes to exclude application of the *Land Acquisition (Just Terms Compensation) Act 1991* and to ensure that any land acquired by the Minister is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

8. The requirement that the acquisition of property be on just terms is an important safeguard of the right to property. The Committee is concerned about the lack of protection the Bill affords to property rights and interests. There do not appear to be circumstances that justify the departure from the application of the *Land Acquisition (Just Terms Compensation) Act 1991*.

9. The Committee is concerned that the right to, and interests in, property are inadequately safeguarded by the Bill. It is uncertain whether the circumstances justify exclusion of the *Land Acquisition (Just Terms Compensation) Act 1991*. Accordingly, the Committee is concerned that the Bill may trespass unduly on personal rights and liberties.

10. The Committee asks Parliament to consider whether the personal rights and liberties are unduly trespassed by the Bill as it allows the compulsory acquisition of land and interests in the land without compensation.

Delegation of legislative powers [s 8A(1)(b)(iv) LRA]

Issue: Commencement – Clause 2

11. Clause 2 of the Bill proposes that the Act commence on proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that Act on a day it chooses after assent or not to commence the Act, or parts of the Act, at all. However, there may be good reasons why such discretion is required.

12. The Committee asks Parliament to consider whether providing that the Bill commence on proclamation rather than on assent is an appropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

26. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

Date Introduced:	5 June 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier and Citizenship

Background

1. The Committee reported on this Bill in its Legislation Review *Digest* 1 of 2007.
2. The Committee resolved to write to the Premier seeking advice as to why parts of the Bill commence on proclamation rather than on assent and when commencement is likely.

Minister's Reply

3. By letter dated 16 August 2007, the Premier replied to the Committee's concerns, stating:

These parts consist of amendments to the *Community Land Development Act 1989*, *Conveyancing Act 1919*, *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986*... while the amendments relate to different Acts, they are similar in intent and form. They all require location plans showing the division of land to be lodged with a separate document containing information that is currently provided on the plan itself, thereby increasing the drawing area on the plan.

The form of this document is to be prescribed by regulations. The Minister advises that the relevant regulations... are subject to statutory repeal on 1 September 2007 and are currently being reviewed. Updated regulations, which will include the prescribed form for the document, are expected to be made by 1 September 2007, at which time the relevant provisions of the Bill will also be commenced.

Committee's Response

4. The Committee thanks the Premier for his reply.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

29 June 2007

The Hon Morris Iemma MP
Premier
Level 40 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Premier *Morris*

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee reported on its consideration of the Bill in its *Legislation Review Digest No 1 of 2007*.

The Committee resolved to write to you for advice on the following matters.

Commencement by proclamation

The Committee notes that the following parts of the *Statute Law (Miscellaneous Provisions) Bill 2007* are to commence on proclamation rather than on assent:

- Amendments to the *Community Land Development Act 1989*;
- Amendments to the *Conveyancing Act 1919*;
- Amendments to the *Strata Schemes (Freehold Development) Act 1973*;
- Amendments to the *Strata Schemes (Leasehold Development) Act 1986*.

The Committee accordingly seeks your advice as to:

1. *Why are parts of the Statute Law (Miscellaneous Provisions) Bill 2007 to commence on proclamation rather than on assent?*
2. *When is commencement likely to be proclaimed?*

Thank you for your attention to these matters.

Should you have any further queries, please contact Talina Drabsch, Senior Committee Officer, on 9230 2128 or talina.drabsch@parliament.nsw.gov.au.

Yours sincerely



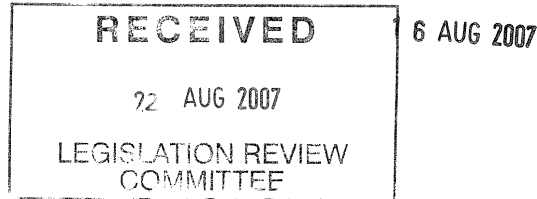
Allan Shearan MP
Chair



Premier of New South Wales
Australia

TCO/21185

Mr Allan Shearan MP
Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000



Dear Mr Shearan,

I refer to your letter dated 29 June 2007, concerning the Legislation Review Committee's consideration of the *Statute Law (Miscellaneous Provisions) Bill 2007* (the Bill), which seeks advice concerning certain parts of the Bill that are to commence on proclamation rather than assent.

These parts consist of amendments to the *Community Land Development Act 1989*, *Conveyancing Act 1919*, *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986*.

As these amendments were proposed by the Minister for Lands, the Hon A B Kelly MLC, I have sought the Minister's advice on this matter.

I am advised that, while the amendments relate to different Acts, they are similar in intent and form. They all require location plans showing the division of land to be lodged with a separate document containing information that is currently provided on the plan itself, thereby increasing the drawing area on the plan.

The form of this document is to be prescribed by regulations. The Minister advises that the relevant regulations (namely the *Community Land Development Regulation 2000*, the *Strata Schemes (Freehold Development) Regulation 2002* and the *Strata Schemes (Leasehold Development) Regulation 2002*) are subject to statutory repeal on 1 September 2007 and are currently being reviewed. Updated regulations, which will include the prescribed form for the document, are expected to be made by 1 September 2007, at which time the relevant provisions of the Bill will also be commenced.

I trust this information is of assistance.

Yours sincerely


for **Morris Iemma MP**
Premier

Part Two – Regulations

Outline of the Regulation/Issues

Workers Compensation Amendment (Miscellaneous Provisions) Regulation 2006

Recommendation

No further action required.

Grounds for comment

Personal rights/liberties	See comment below.
Business impact	Nil
Objects/spirit of Act	Nil
Alternatives/effectiveness	Nil
Duplicates/overlaps/conflicts	Nil
Needs elucidation	Nil
SLA, ss 4,5,6, Sched 1, 2	Nil
Other	Nil

Persons contacted	
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Explanatory Note

The objects of this Regulation are as follows:

- (a) to prescribe the period within which wage details must be provided to an injured worker for the purposes of the worker calculating his or her average weekly earnings (see Schedule 1 [1]),
- (b) to deal with the following matters that arise as a result of the amendments made to the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) by Schedule 1.1 to the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*:
 - (i) modifying the details required to be included by insurers in a notice of intention to discontinue or reduce weekly payments, so that they are the same as those now required by the 1998 Act to be included in a notice that liability is disputed (see Schedule 1 [2] and [3]),
 - (ii) adding to the details required to be included by insurers in a notice that liability is disputed and omitting from the details that the regulations require to be included in such a notice those details that are now required by the 1998 Act (see Schedule 1 [4] and [5]),

- (iii) restating the obligations on employers and insurers in possession of reports relating to an injured worker to provide the reports to the worker if liability is disputed, so as to ensure all relevant documents are served on a worker at the same time as serving a notice disputing a workers compensation claim and so as to prevent reports being used in proceedings unless they are disclosed prior to the proceedings (see Schedule 1 [6], which inserts a provision in place of those omitted by Schedule 1 [6] and [8]),
 - (iv) omitting a redundant provision relating to requirements in relation to examinations of workers at the direction of employers (as this matter is now to be dealt with by the WorkCover Guidelines) (see Schedule 1 [7]),
 - (v) removing the right of appeal against all orders, determinations, rulings and directions of an interlocutory nature of the Commission constituted by an Arbitrator, to a Presidential Member of the Workers Compensation Commission (see Schedule 1 [16]),
- (c) to make the following amendments in relation to restrictions on obtaining medical reports:
- (i) extending the operation of provisions imposing restrictions on obtaining medical reports to work injury damages threshold disputes as well as claims (see Schedule 1 [9], [10] and [12]),
 - (ii) limiting the medical reports that are admissible in proceedings to one report from the specialty treating the injured worker or, if no specialist has treated the worker, to one report from a specialist of a specialty relevant to the treatment of the worker's injury (see Schedule 1 [10]) and clarifying the application of that limitation to all medical reports of a medico-legal nature (see Schedule 1 [10], to the extent that it inserts proposed clause 43 (4)),
 - (iii) replacing the concept of permissible updates to medical reports with supplementary reports, which are admissible in prescribed circumstances (see Schedule 1 [11] and [13]),
 - (iv) clarifying the operation of a provision that imposes restrictions on the disclosure of medical reports to approved medical specialists, to make it clear that medical reports must be disclosed in the listed circumstances and must not be otherwise disclosed and extending it to work injury damages threshold disputes (see Schedule 1 [12]),
 - (v) clarifying the application of those restrictions to all medical reports of a medico-legal nature (see Schedule 1 [12], to the extent that it inserts proposed clause 43A (4)),
 - (vi) providing that a party to a claim or to proceedings on a claim is not entitled to be paid for or recover the cost of obtaining a medical report in connection with the claim unless the report has been admitted into those proceedings on behalf of the party or has been disclosed to an approved medical specialist (see Schedule 1 [14]),

- (vii) making a transitional provision relating to the application of restrictions on obtaining medical reports and on the recovery of costs associated with medical reports (see Schedule 1 [15]).

Comment

5. The Regulation inserts clause 200B into the *Workers Compensation Regulation 2003* so to remove the right of appeal to a Presidential Member of the Workers Compensation Commission regarding certain decisions of the Commission constituted by an Arbitrator. These decisions include all preliminary or interim orders, determinations, rulings and directions of an interlocutory nature.
6. This provision thus operates to exclude the review of such decisions. However, as the exclusion of review only relates to matters of an interlocutory nature and not final determinations, the Committee believes that it is not necessary to draw the special attention of Parliament to this provision.
7. The Regulation also restricts the number of medical reports that can be admitted in any proceedings on a claim or a work injury damages threshold dispute regarding an injured worker to one forensic medical report on behalf of each party to the proceedings. Whilst this may limit the amount of evidence that may be introduced, the Regulations do provide that, where the injury has involved treatment by more than one specialist medical practitioner, with different qualifications, an additional forensic medical report may be admitted from a medical practitioner with qualifications in that specialty. Supplementary reports are also admissible if it has the purpose of clarifying the original report. Restrictions on the number of medical reports may alleviate problems associated with 'duelling' medical practitioners and may assist with controlling the costs of the scheme. In any event, the number of medical reports was restricted prior to the introduction of this Regulation. Clause 43 previously provided that only one medical report in any particular specialty could be admitted on behalf of a party to the proceedings. Accordingly, the Committee believes that the restriction on medical reports should be brought to the attention of Parliament.

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	01/03/07	1169	03/07/07	10/09/07

Appendix 1: Index of Bills Reported on in 2007

	Digest Number
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	2
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	1
APEC Meeting (Police Powers) Bill 2007	1
Appropriation Bill 2007; Appropriation (Parliament) Bill 2007; Appropriation (Special Offices) Bill 2007; Payroll Tax Bill 2007; State Revenue and Other Legislation Amendment (Budget) Bill 2007	1
Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007	2
Biofuel (Ethanol Content) Bill 2007	2
Births, Deaths and Marriages Registration Amendment Bill 2007	1
Brothels Legislation Amendment Bill 2007	2
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	1
Children (Criminal Proceedings) Amendment (Publication of Names) Bill 2007	2
Climate Futures Bill 2007*	2
Commission for Children and Young People Amendment (Parliamentary Joint Committee) Bill 2007	1
Constitution Amendment (Speaker) Bill 2007	2
Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007	2
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	1
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	2
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	1
Drug and Alcohol Treatment Bill 2007	1
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	1
Educational Support for Dyslexic Children Bill 2007*	2
Electricity Supply Amendment (Offences) Bill 2007	2
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007	2
Fair Trading Amendment (Funeral Goods and Services) Bill 2007	1
Government Publicity Control Bill 2007*	2
Government Schools (Infrastructure Register) Bill 2007*	2
Guardianship Amendment Bill 2007	1
Human Cloning and Other Prohibited Practices Amendment Bill 2007	1
Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007	1
Judicial Officers Amendment Bill 2007	1

	Digest Number
Mental Health Bill 2007	1
Motor Dealers Amendment Bill	2
National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007	2
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	2
Police Superannuation Legislation Amendment Bill 2007	1
Private Health Facilities Bill 2007	1
Professional Standards Amendment (Mutual Recognition) Bill 2007	1
Protection of the Environment Operations Amendment (Waste) Bill 2007	2
Renewable Energy (New South Wales) Bill	2
Royal Rehabilitation Centre Sydney Site Protection Bill 2007*	2
Rural Communities Impacts Bill 2007*	1
Security Industry Amendment (Patron Protection) Bill 2007*	2
Senator's Elections Amendment Bill 2007	1
Standard Time Amendment (Daylight Saving) Bill 2007	2
Statute Law (Miscellaneous Provisions) Bill 2007	1
Superannuation Legislation Amendment Bill 2007	2
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	1
Transport Administration Amendment (Portfolio Minister) Bill 2007	1
Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*	2
University of Technology (Kuring-gai Campus) Bill 2007*	2
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07			1
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06	8, 9	
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	10	
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05	1	
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	1	
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06		8	
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	1	
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06	13,15	
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06		10	
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	5	
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06		5	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07			1
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07			1
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06	8,9	
Education Legislation Amendment Bill 2006	Minister for Education and Training	10/11/06		16	
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06	6,8	
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06	07/06/06	8,12	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07			1
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06	8,9	

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07			1
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06	3,5	
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06	2	
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	1	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07		1,2
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	7	
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07			1
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06	6,8	
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	5	
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	1	
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05	05/09/06	11	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2007

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	N, R				
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	N, R				
APEC Meeting (Police Powers) Bill 2007	N, R, C		N, R		
Biofuel (Ethanol Content) Bill 2007	N, R			N, R	
Brothels Legislation Amendment Bill 2007	N, R		N, R	N, R	
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	N				
Climate Futures Bill 2007*	N, R				
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	N, R				
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	N			N, R	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	N			N, C	
Drug and Alcohol Treatment Bill 2007	R, N, C			N, R	
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007			N		
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007				N	
Guardianship Amendment Bill 2007	N, C, R		N	N, C	
Human Cloning and Other Prohibited Practices Amendment Bill 2007	N, R				
Mental Health Bill	N, R, C	N, C	N, C	N, R	
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	N				

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Renewable Energy (New South Wales) Bill	N			N	
Security Industry Amendment (Patron Protection) Bill 2007*	N				
Statute Law (Miscellaneous Provisions) Bill 2007	N			N, C	
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	N, R, C			N, C, R	
University of Technology (Kuring-gai Campus) Bill 2007*	N, R			N, R	
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	N, R				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2006

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	Minister for Planning	03/07/06	10/09/07	2