

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 12 of 2009

21 September 2009

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Legislation Review Committee.

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly. [Sydney, NSW] : The Committee, 2009, p51, 30cm

Chair: Mr Allan Shearan MP

21 September 2009

ISSN 1448-6954

1. Legislation Review Committee—New South Wales

2. Legislation Review Digest No. 12 of 2009

I Title.

II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 12 of 2009

[Table of Contents](#)

Membership & Staff.....	ii
Functions of the Legislation Review Committee.....	3
Guide to the Legislation Review Digest.....	4
Summary of Conclusions	6
Part One – Bills	10
SECTION A: Comment on Bills.....	10
1. Animal Welfare Legislation Amendment Bill 2009	10
2. Major Events Bill 2009	15
3. Protection Of Public Ownership Bill 2009*	26
4. Real Property Amendment (Land Transactions) Bill 2009	29
5. Shop Trading Amendment Bill 2009	33
Part Two – Regulations	37
SECTION A: Regulations for the special attention of Parliament under S 9(1)(B) of the <i>Legislation Review Act 1987</i>	37
Appendix 1: Index of Bills Reported on in 2009	43
Appendix 2: Index of Ministerial Correspondence on Bills	47
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009	48
Appendix 4: Index of correspondence on regulations	51
* Denotes Private Member’s Bill	

MEMBERSHIP & STAFF

Chair	Allan Shearan MP, Member for Londonderry
Deputy	Paul Pearce MP, Member for Coogee
Members	Amanda Fazio MLC Robert Furolo MP, Member for Lakemba Sylvia Hale MLC Judy Hopwood MP, Member for Hornsby Robyn Parker MLC Russell Turner MP, Member for Orange
Staff	Catherine Watson, Committee Manager Carrie Chan, Senior Committee Officer Kathryn Simon, Senior Committee Officer Victoria Maigre, Committee Officer Millie Yeoh, Assistant Committee Officer
Panel of Legal Advisers The Committee retains a panel of legal advisers to provide advice on Bills as required.	
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3308
Facsimile	02 9230 3052
Email	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc/digests

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 3).

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 3).

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 2009

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 2009

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 2009

This table specifies the action the Committee has taken with respect to Bills that received comment in 2008 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 2009

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

1. Animal Welfare Legislation Amendment Bill 2009

Issue: Ill and Widely Defined Powers - Schedule 1[4] – Proposed section 30A

18. The Committee understands that proposed 30A provides the Director-General with discretion to disqualify a person (or corporation) from holding an authority under the *Exhibited Animals Protection Act 1986* for a period of up to five years where the Director General cancels the authority on misconduct grounds. The Committee notes that proposed section 30A defines misconduct grounds by reference to section 30 of the *Exhibited Animals Protection Act 1986*. However, the Committee believes that the definition of misconduct grounds in proposed section 30A could be more clearly defined.

2. Major Events Bill 2009

Issue: Oppressive official powers; Freedom of Speech and Right to Peaceful Assembly – Part 4 – Facilitation of Major Events – clause 46 (4)(e) – Directions to leave:

26. The Committee appreciates the need for people to behave in a safe and orderly manner at major events and understands the provisions for a person who has contravened a provision, or has failed to comply with a request or direction, or is causing a significant disruption or behaving in an offensive manner, or in a manner likely to endanger the person or another person as set out under clauses 46 (4) (a) to (d) above.
27. However, the Committee is concerned with the scope of clause 46 (4)(e), concerning the person who “*is about to contravene* a provision of this Act or the regulations” but who has not already contravened a provision or is not contravening a provision yet.
28. The Committee, therefore, holds concerns that clause 46 (4)(e) of Part 4, could appear oppressive and may trespass unduly on individual rights and liberties, with the potentially unintended impact on the right to free speech and the right to peaceful assembly, when the person has not yet contravened a provision. Accordingly, the Committee refers this to Parliament.

Issue: Property – use or enjoyment of land – Part 4: Facilitation of Major Events – clause 61 – No liability in nuisance:

31. However, given the public interest nature of the specific major event and the temporary nature and period of a major event, the Committee does not consider clause 61 to be an undue trespass on personal rights and liberties.

Issue: Denial of Compensation – Part 4: Facilitation of Major Events – clause 62 – Compensation not payable in respect of major event-related matters:

34. Therefore, by reading clause 62 (2) in conjunction with clause 62 (1) of Part 4, the Committee does not find clause 62 (1) trespasses unduly on personal rights and liberties.

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(b),(c) Personal conduct; clause 45 (4)(b),(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(b),(c) Directions to leave:

39. The Committee is concerned that under clauses 44 (2)(b) and (c) and 45 (4)(b) and (c), an authorised officer could include ‘an officer or employee of a government agency’ and ‘a person, or a member of a class of persons, prescribed by the regulations’, which appears quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 45 (3).
43. The Committee is concerned that an authorised officer under clauses 46 (8)(b) and (c), ‘an officer or employee of a government agency’ and ‘a person, or a member of a class of persons, prescribed by the regulations’ appear quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 46 (7) and that it becomes an offence under clause 46 (5) when a person fails to comply with a direction under this proposed section.
44. The Committee refers to Parliament the question of whether the discretion to appoint authorised persons under the above clauses 44(2)(b) and (c); 45 (4)(b) and (c); and 46 (8)(b) and (c), without the requirements regarding qualifications, training or attributes, could make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

Issue: Matters which should be regulated by Parliament - Part 2: Major Events – clause 5 – declaration of major event by regulation; Part 3: Major Event Authorities – clause 8 – establishment of major event authorities by regulations; and Part 4: Facilitation of Major Events – Division 5 Safety and crowd management at major events – clause 43 (7)(g) – definition of *prohibited thing*:

47. The Committee is concerned that there may be a significant delegation of legislative power under Part 2, clause 5; and Part 3, clause 8; by allowing:
- regulations to declare an event to be a major event;
 - providing for the Minister administering the proposed Act to recommend the making of such a regulation;
 - regulations declaring a major event could designate a responsible authority for the event;
 - regulations to establish a corporation as a major event authority.
49. The Committee regards that important definition of words in an Act such as the definition of a ‘*prohibited thing*’ should be matters regulated by Parliament under an amendment legislation rather than to be prescribed by regulations.

50. The Committee also notes that the ability of Parliament to effectively scrutinise the criteria for the proper consideration of declaring an event to be a major event and debate on whether it is in the public interest for the event to be declared a major event, is dependant on Parliament sitting rather than through regulations made when Parliament may not be sitting.
51. Therefore, the Committee asks Parliament to consider whether clause 5 of Part 2; clause 8 of Part 3; and clause 43 (7)(g) of Part 4, may constitute as an inappropriate delegation of legislative power.

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(c) Personal conduct; clause 45 (4)(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(c) Directions to leave:

53. Therefore, the Committee also refers to Parliament the question as to whether it is an appropriate delegation of legislative power to allow these significant matters to be conducted by a person or a member of a class of persons to be prescribed by regulation under clauses 44(2)(c); 45 (4)(c); and 46 (8)(c), without requirements concerning their qualifications, training or attributes.

Issue: Enabling declarations influencing the exercise of powers without any obligation for them to be tabled in Parliament or subject to disallowance – Part 4 – Division 8 Protection of the Environment Operations Act 1997 – clause 57 Modification of environment impacts:

55. The Committee refers to Parliament the question as to whether the making of such declarations under clause 57, which would have effect despite the terms of any other Act or statutory instrument, and not disallowable by the Parliament, may represent an exercise of legislative power with insufficient parliamentary scrutiny.
56. The Committee considers that any such modification of environmental impacts may be more appropriately made by an amending legislation or by regulations rather than through a declaration made by the responsible authority for the major event, especially if the modifications will have effect despite the terms of any other Act or statutory instrument.

3. Protection Of Public Ownership Bill 2009*

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

4. Real Property Amendment (Land Transactions) Bill 2009

15. Schedule 1 [6], proposed section 129(2)(p) limits compensation payable when the loss or damage arises from the provision by the Registrar-General of information supplied in the notice referred to in section 39(1B). However the Committee is of the view that this provision will not unduly trespass on personal rights and liberties, particularly given proposed section 129(1)(g), which will provide compensation for loss or damage resulting from an error of the Registrar General in recording details supplied in the notice.

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

17. The Committee accepts the advice receive above and has not identified any further issues under s 8(1)(b)(iv) *LRA*

5. Shop Trading Amendment Bill 2009

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

Part One – Bills

SECTION A: Comment on Bills

1. ANIMAL WELFARE LEGISLATION AMENDMENT BILL 2009

Date Introduced:	11 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Ian MacDonald MP
Portfolio:	Primary Industries

Purpose and Description

1. The objects of this Bill are:

(a) to amend the *Exhibited Animals Protection Act 1986* (the Act):

(i) to specify the matters that the Director-General of the Department of Industry and Investment may consider when deciding whether to grant or refuse an application by a person for an authority for the display or exhibition of animals; and

(ii) to enable the Director-General to disqualify a person who holds such an authority that is cancelled on misconduct grounds from holding an authority for a period of up to 5 years; and

(iii) to provide for applications for the review of certain decisions under the Act to be made to the Administrative Decisions Tribunal, instead of those decisions being subject to appeal to the Minister for Primary Industries or the Local Court, as is currently the case; and

(b) to amend the *Prevention of Cruelty to Animals Act 1979* to enable an order made by a court in another State or a Territory that prohibits a person from buying or possessing any animal to be enforceable in New South Wales; and

(c) to amend the *Apiaries Act 1985* to enable the regulations to exempt a person or class of persons from the requirement to be registered as a beekeeper.

Background

Amendments to the *Exhibited Animals Protection Act 1986*

2. The *Exhibited Animals Protection Act 1986* provides guidance to the Director General of Industry and Investment New South Wales when considering an application for an authority. Authorities are licences, approvals or permits to exhibit or supervise the exhibition of animals in zoos, marine parks, circuses and other establishments that exhibit animals to the public.
3. The first amendment to the *Exhibited Animals Protection Act 1986* provides a number of factors that the Director General may consider when determining whether to grant or refuse an application for an authority. For example, the Director General may consider whether the applicant has been convicted or found guilty of an offence against NSW animal welfare legislation, namely the *Exhibited Animals Protection Act*

1986, the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974*, any instrument made under any of these Acts or law of another State, Territory or the Commonwealth relating to the keeping or protection of animals.

4. Other factors in proposed section 27 (3A) include whether the applicant failed to comply with any term or condition of an authority, whether the applicant has held an authority that has been suspended or cancelled and their capacity to care for animals. Proposed section 27 (3B) provides that the Director General must refuse to grant an application for the issue of an authority to a person (or director of a corporation) who is disqualified from holding an authority.
5. Another important amendment is proposed section 30A, which provides the Director General with discretion to disqualify a person from holding an authority for up to five years where that person (or director of a corporation where a corporation is the subject of the declaration) holds an authority that is cancelled on misconduct grounds. Proposed section 30A(8) states that for the purpose of proposed section 30A an authority is cancelled on misconduct grounds if it is cancelled for any reason other than because it was issued in error or because the holder of the authority requested the cancellation.
6. Proposed section 32 also provides that a person may apply to the Administrative Decisions Tribunal (ADT) for a review of a decision to refuse an application for the issue, renewal or variation or transfer of an authority; a decision to suspend or cancelled an authority; a decision to impose a term or condition on an authority; or a decision that results in the person being disqualified from holding an authority.
7. If an application for review is made to the ADT, the cancellation or expiry of the authority, the imposition or variation of the term or condition or the disqualification period is stayed (despite Division 2, Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*).
8. Under the current legislation, such appeals can be heard either by the New South Wales Minister for Primary Industries or by the Local Court. However, as stated in the Agreement in Principle Speech, the amendment “will result in a single appeal pathway to the Administrative Decisions Tribunal enables appeals to be dealt with by members of the tribunal with appropriate expertise in administrative law. This is consistent with existing appeal mechanisms in other New South Wales animal licensing legislation.”

Amendments to the *Prevention of Cruelty to Animals Act 1979*

9. Schedule 2 of the Bill amends the *Prevention of Cruelty to Animals Act 1979* to provide the Minister of Primary Industries with power to recognise an “interstate prohibition order”, which is an order that prohibits certain persons from purchasing, acquiring or taking possession or custody of an animal. As stated in the Agreement in Principle Speech the Victorian and Tasmanian legislation allows the responsible Ministers in these jurisdictions to recognise interstate court orders that prohibit individuals from keeping animals.

Animal Welfare Legislation Amendment Bill 2009

10. Pursuant to proposed section 31AA, once an interstate prohibition order is recognised by the Minister, it can be enforced in NSW under section 31 of the *Prevention of Cruelty to Animals Act 1979*. If a person is served with notice of a Minister's decision to recognise the interstate order and they fail to comply with the order then they will be guilty of the same offence as a person who fails to comply with a NSW order under section 31, which has a maximum penalty of 25 penalty units.
11. As stated in the Agreement in Principle Speech, these amendments in section 31AA are intended to "reduce the risk of a person who is subject to such an order in another State simply moving to New South Wales and possibly re-offending". As also stated in the Agreement in Principle Speech, the "legislation will allow the New South Wales Government to be proactive in recognising interstate offenders and preventing them from owning animals in New South Wales."

Amendments to the *Apiaries Act 1985*

12. Finally, the Bill proposes to amend the *Apiaries Act 1985* to allow exemptions from registration for beekeepers. Currently the *Apiaries Act 1985* requires a person who is a beekeeper in NSW to be registered in NSW. The proposed amendments provide that the regulations may exempt any person from the requirement to be registered as a beekeeper.
13. According to the Agreement in Principle Speech, beekeeping is a primary industry that is dependant on native flora for approximately 80 per cent of its production. Nectar and pollen production is seasonal and varies between locations, which means beekeepers must regularly move their hives significant distances to maintain production.
14. As stated in the Agreement in Principle Speech, the intention of the amendment is to allow beekeepers registered in other States to operate in NSW for a three-month period without registration in NSW. As also stated in the Agreement in Principle Speech, this approach is consistent similar legislation in states such as Queensland and Victoria, which allow NSW beekeepers to keep bees for a limited time without being registered.

The Bill

15. Outline of provisions

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

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

Schedule 1 Amendment of Exhibited Animals Protection Act 1986 No 123

Schedule 1 [1] specifies the matters the Director-General may consider in considering whether to grant or refuse an application for a licence, approval or permit (an authority). In addition, the Director-General must refuse to grant an application to a person who is disqualified from holding an authority or to a corporation if any officer of that corporation is disqualified.

Schedule 1 [3] defines an officer of a corporation to mean a director of the corporation or a person who is otherwise concerned in its management.

Schedule 1 [4] enables the Director-General, by order in writing served on a person, to disqualify the person from holding an authority for up to 5 years, if the person's authority is cancelled on misconduct grounds. If the person who is disqualified is a corporation, any person who was an officer of the corporation at the time the authority was cancelled may also be disqualified.

Schedule 1 [5] replaces the provisions that enable a person who is aggrieved by certain decisions made by the Director-General in relation to authorities to appeal to the Minister or the Local Court. Under the amendment, a person aggrieved by such a decision (and by a decision that results in a person being disqualified from holding an authority) will instead be able to apply to the Administrative Decisions Tribunal for a review of the decision.

Schedule 1 [2] is a consequential amendment.

Schedule 1 [7] provides that the amendment in Schedule 1 [5] applies only to decisions made on or after the amendment and enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [6] is a consequential amendment.

Schedule 2 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

Schedule 2 enables the Minister to recognise, by order in writing, an order made by a court in another State or a Territory prohibiting a person from purchasing or acquiring, or taking possession or custody of, any animal. If a person who is served with notice of the Minister's decision to recognise the interstate order fails to comply with the order in NSW, the person will be guilty of the same offence as a person who fails to comply with a NSW order (maximum penalty: 25 penalty units, currently \$2,750).

Schedule 3 Amendment of Apiaries Act 1985 No 16

Schedule 3 [1] enables the regulations to exempt a person or class of persons from the requirement to be registered as a beekeeper.

Schedule 3 [2] is a related amendment.

Issues Considered by the Committee

Insufficiently defined administrative powers [s 8A(1)(b)(ii) LRA]

Issue: Ill and Widely Defined Powers - Schedule 1[4] – Proposed section 30A

16. Proposed section 30A provides the Director General with discretion to disqualify a person (or corporation) from holding an authority under the *Exhibited Animals Protection Act 1986* for a period of up to five years where the person holds an authority that is cancelled by the Director-General on misconduct grounds. Proposed section 30A(8) reads that: "an authority is cancelled on **misconduct grounds** if it is cancelled for any reason other than because it was issued in error or because the holder of the authority requested the cancellation". Accordingly, misconduct grounds are defined in proposed

Animal Welfare Legislation Amendment Bill 2009

section 30A(8) by reference to sections 30(1)(a) to 30(1)(e) of the *Exhibited Animals Protection Act 1986*, excluding sections 30(1)(f) and (g) of the *Exhibited Animals Protection Act 1986*.

17. Section 30 of the *Exhibited Animals Protection Act 1986* provides a number of grounds on which Director General may cancel (or suspend) an authority, which include:
- (a) if the holder commits an offence against the *Exhibited Animals Protection Act 1986*, the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974* or an instrument made under any of these Acts (section 30(1)(a)); or
 - (b) if the holder fails to comply with any term or condition of the authority or of any other authority, being a term of condition applicable to the holder (30(1)(b)); or
 - (c) in the case of a licence, if the holder fails to ensure that the licensed animal display establishment conforms to and is conducted in accordance with the prescribed standards (section 30(1)(c));
 - (d) if the authority was issued pursuant to a false or misleading document, statement or representation (section 30(1)(d)); or
 - (e) if for any other reason the Director-General is of the opinion that the holder is not a fit and proper person to hold the authority (section 30(1)(e)).

18. The Committee understands that proposed 30A provides the Director-General with discretion to disqualify a person (or corporation) from holding an authority under the *Exhibited Animals Protection Act 1986* for a period of up to five years where the Director General cancels the authority on misconduct grounds. The Committee notes that proposed section 30A defines misconduct grounds by reference to section 30 of the *Exhibited Animals Protection Act 1986*. However, the Committee believes that the definition of misconduct grounds in proposed section 30A could be more clearly defined.

The Committee makes no further comment on this Bill.

2. MAJOR EVENTS BILL 2009

Date Introduced:	10 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Kristina Keneally MP
Portfolio:	Planning

Purpose and Description

1. This Bill facilitates the holding and conduct of major events in New South Wales; and for other purposes.
2. It collects together the provisions that have been regularly used in special legislation for special events in the recent past, and allows specified provisions to be applied to an event that is declared in regulations to be a major event for the purposes of the legislation.
3. An event can be declared to be a major event only after consideration of the nature of the event; the number of people expected to attend or participate in the event; and whether it is in the public interest for the event to be declared a major event.
4. The regulation that declares an event to be a major event will declare which components of the Bill will apply to the event, and specify the period of time that those provisions apply.
5. The Bill contains components that can be activated by regulation for a declared major event. A specially constituted agency may be established or an existing government agency or official may be designated as the responsible authority for the event. The responsible authority may co-ordinate the delivery of government services and government agencies may be required to cooperate with the responsible authority to support the event.
6. The responsible authority may coordinate special transport services and will be able to plan and coordinate integrated road and transport services in consultation with the Roads and Traffic Authority.
7. General traffic management powers may be applied to a declared major event, such as powers to allow for the closure of roads, the designation of special lanes and clearways for the event and the removal of vehicles from those areas, and offences for illegal car parks.
8. Advertising and marketing controls may be applied to a declared major event, including restrictions on the use of airspace, aerial advertising and advertising on buildings and structures in and around specified major event venues and facilities, and protection of special event titles and insignia.
9. Safety and crowd management provisions may be applied to a declared major event, including offences relating to dangerous, offensive or nuisance conduct and provisions for the appointment of authorised officers with powers relating to the

Major Events Bill 2009

issuing of penalty notices, directions to leave venues and the authority to request a search of articles or electronic search of persons as a condition of entry to venues.

10. The liability of the Government and others may be limited, including the civil liability of agencies and staff when exercising their functions in good faith in relation to the event, and the protection of persons from liability in nuisance in relation to the staging of an event. However, the Government can still be liable in relation to acts or omissions that cause personal injury to a person or the death of a person.
11. This Bill allows for the modification of the application of the *Environmental Planning and Assessment Act 1979*, *Local Government Act 1993* and the noise provisions of the *Protection of the Environment Operations Act 1997* to a major event. It does not modify the application of the *National Parks and Wildlife Act 1974*.
12. The Bill contains provisions that apply generally to a declared major event, including provisions allowing court proceedings to be brought for an offence against a provision of the Act or regulations and the issuing of identification cards to authorised officers.

Background

13. This Bill will remove the need to enact special legislation for some major events, and will reduce the need to enact special legislation for other major events. According to the Agreement in Principle speech, other jurisdictions such as Victoria, Queensland and New Zealand, also use generic major events legislation.
14. Many of the provisions in this Bill are similar to the provisions that applied during the Sydney 2000 Olympic Games and World Youth Day 2008. For example, the restrictions on advertising applied during both of those events.
15. Restrictions on advertising may be required for a major event in order to prevent ambush marketing and to provide clean venues, free of advertising, to event organisers. The restrictions on advertising ensure that event organisers can protect commercial relationships with their business partners and event sponsors.
16. From the Agreement in Principle speech:

Major events bring significant economic and community benefits to New South Wales and this Government has worked hard to ensure that New South Wales continues to be a leading global events destination. In recent years New South Wales has demonstrated its ability to successfully host enormous sporting and cultural events, including the Sydney 2000 Olympic Games and the 2003 Rugby World Cup. Most recently, Sydney hosted World Youth Day in July 2008, which brought more than 200,000 people to the mass celebrated by the Pope at Randwick Racecourse. Major events increase tourism, create jobs and can contribute millions of dollars to the New South Wales economy. New South Wales dominates tourism in Australia, receiving over 50 per cent of all international tourists to Australia and over 30 per cent of domestic visitors. Tourism is enormously important to the New South Wales economy and injects around \$24 billion into the State economy every year...An example of the benefits that major events can bring to New South Wales is the Australian round of the World Rally Championship, which was held in the Northern Rivers region of New South Wales earlier this month. Events New South Wales has estimated that the rally will generate more than \$100 million in direct economic benefits for New South Wales over the life of the 10-year agreement covering the event. It is boosting tourism and creating jobs in regional New South Wales. In October Sydney will host the Sydney 2009 World Masters Games, which will bring over

Major Events Bill 2009

30,000 people from more than 90 countries to compete at more than 70 venues throughout Sydney.

17. Major events involve planning, coordination and logistical support from government agencies, including transport and traffic management, health, police and emergency services, crowd management and use of venues.
18. Special legislation has been enacted to facilitate the conduct of particular major events in New South Wales. This occurred in relation to the World Rally Championship. Special legislation was enacted to facilitate the Sydney 2000 Olympic Games, World Youth Day 2008, V8 Supercars motor racing at Homebush and the Sydney 2009 World Masters Games.
19. In general, only events that are anticipated to be of a large scale with a large number of participants or spectators would be declared as major events.
20. Not all components of the Bill will be relevant to every major event. The scale of the event will sometimes mean that it might be necessary to set up a special government agency to coordinate government support for the event, as was done for World Youth Day 2008 and the Sydney 2000 Olympic Games.
21. At other times, it may not be necessary and existing arrangements could be sufficient. For these events, the Department of Premier and Cabinet's Community Engagement and Events Division will generally continue to be responsible for the central coordination of operational planning and logistical support by government agencies for special and major events.

The Bill

22. The object of this Bill is to attract, support and facilitate the conduct and holding of major events in New South Wales. In particular, the Bill:
 - (a) provides for the declaration of major events, and the designation of authorities responsible for those events (**responsible authorities**), by regulation, and
 - (b) enables statutory authorities that manage, co-ordinate or regulate major events to be established by regulation (**major event authorities**), and
 - (c) facilitates the conduct and holding of major events by:
 - (i) providing that responsible authorities for major events may give directions to government agencies involved in the provision of transport and other government services relevant to ensure a co-ordinated approach to the provision of those services, and
 - (ii) enacting specific provisions in relation to major events and major event venues and facilities to deal with traffic management, commercial and airspace controls and safety and crowd management, and
 - (iii) ensuring that activities and land uses associated with major events can be carried out despite the requirements of other legislation such as the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

23. Outline of provisions

Part 1 Preliminary

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

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

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. The term **government agency** includes NSW Government agencies, Divisions of the Government Service, public authorities, local councils and State owned corporations, but does not include the NSW Police Force.

Part 2 Major events

Clause 5 provides that the regulations may declare an event to be a major event (a **major event**) for the purposes of the proposed Act. The Minister administering the proposed Act (**the Minister**) may recommend the making of such a regulation only if the Minister has considered:

- (a) the nature of the event, and
- (b) the number of people expected to attend or participate in the event, and
- (c) whether it is in the public interest for the event to be declared a major event.

Such a regulation must, amongst other things, describe the event and specify the period for which the declaration of the major event is in force.

Clause 6 provides that regulations declaring a major event must designate a responsible authority for the event. The responsible authority may be:

- (a) a major event authority or other government agency, or
- (b) a public official (within the meaning of the *Protected Disclosures Act 1994*).

Clause 7 provides for the appointment of advisory committees to the responsible authority for a major event.

Part 3 Major event authorities

Clause 8 enables regulations to establish a corporation and constitute it as a major event authority for the purposes of a specified major event (a **major event authority**).

Such major event authorities may be a chief executive governed authority or a board governed authority. A constituting regulation under the proposed section must specify a corporate name for the major event authority, declare whether the authority is a chief executive governed authority or a board governed authority and set out the functions of the authority in relation to the major event.

Clause 9 provides that affairs of a major event authority are to be managed and controlled by:

- (a) the chief executive of the authority for chief executive governed authorities, and
- (b) the chief executive, subject to and in accordance with any directions given to the chief executive by the board of the authority, for board governed authorities.

However, each major event authority is subject to the control and direction of the Minister in the exercise of its functions.

Clause 10 provides for the constitution of major event authority boards for board governed authorities. The regulations are to determine the number of members of such boards.

Schedule 1 to the proposed Act makes further provision regarding major event authority boards.

Clause 11 deals with the appointment of chief executives for major event authorities.

Clause 12 provides that major event authorities may be dissolved, amalgamated or have their names or nature of governance changed by regulation. **Schedule 2** to the proposed Act makes further provision regarding such dissolutions, changes and amalgamations.

Part 4 Facilitation of major events:

Division 1 Application of Part

Division 2 Co-ordination and co-operation of government agencies

Division 3 Management of roads and traffic

Subdivision 1 Transport areas

Subdivision 2 Road transport legislation

Division 4 Commercial and airspace controls

Division 5 Safety and crowd management at major events

Division 6 *Environmental Planning and Assessment Act 1979*

Division 7 *Local Government Act 1993*

Division 8 *Protection of the Environment Operations Act 1997*

Division 9 Miscellaneous

Part 5 Miscellaneous

Clause 64 provides for the way in which proceedings for offences against a provision of the proposed Act are to be dealt with.

Clause 65 provides that the operation of the proposed Act is not to be regarded as a breach of contract or confidence or otherwise as a civil wrong or giving rise to any remedy under any contract or other instrument.

Clause 66 protects certain specified persons from personal liability in respect of acts done in good faith for the purpose of executing the proposed Act.

Clause 67 provides that the Minister may delegate certain of the Minister's functions conferred or imposed by or under the proposed Act to specified authorised persons.

Clause 68 provides that a responsible authority may delegate certain of the responsible authority's functions conferred or imposed by or under the proposed Act to specified authorised persons.

Clause 69 provides for the recovery of money due to a responsible authority under the proposed Act.

Clause 70 provides that a responsible authority is to issue identification cards to authorised officers (other than police officers) carrying out functions under the proposed Act.

Clause 71 ensures that provisions of the proposed Act that are to be construed as if they formed part of another Act or statutory instrument may be enforced in accordance with the enforcement provisions of that other Act or statutory instrument.

Clause 72 enables the Governor to make regulations for the purposes of the proposed Act, including for or with respect to the following:

- (a) the fees and charges that may be imposed for the purposes of the proposed Act,
- (b) regulating the use by the public of, and the conduct of the public in or on, major event venues and facilities,
- (c) regulating, restricting or prohibiting the bringing of liquor into, or consumption of liquor within, a major event venue or facility during a major event period,
- (d) regulating the provision of services by responsible authorities,
- (e) requiring the payment of fares or other charges for the use of any facility operated or service provided by a responsible authority or a government agency for the purposes of the proposed Act.

Clause 73 enables penalty notices to be issued for prescribed offences against the proposed Act or the regulations.

Clause 74 deals with the commission of offences under the proposed Act by corporations.

Clause 75 provides for the review of the proposed Act in 5 years.

Schedule 1 Constitution and procedure of board governed major event authorities

Schedule 1 contains provisions relating to the constitution and procedure of board governed major event authorities.

Schedule 2 Dissolutions, amalgamations and changes of name or nature of governance of major event authorities

Schedule 2 contains provisions dealing with dissolutions, amalgamations and changes of name or nature of governance of major event authorities.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of *Sporting Venues (Invasions) Act 2003 No 44*

Schedule 4 [2] substitutes section 7 of the *Sporting Venues (Invasions) Act 2003*.

Section 7 currently provides that a person who is banned under certain other legislation from entering a sporting venue as a result of a contravention of a law at a Rugby World Cup match is also banned from entering all Rugby World Cup matches in the State.

The substituted section extends that ban to sporting venues that are major event venues for a major event (within the meaning of the proposed Act) that is a sporting competition. The effect of the substituted section is that a person who is banned under certain specified provisions from entering a major event venue as a result of a contravention of a law at a major event match is (while so banned) also banned from entering any other venue of that major event on any day that a major event match is held there.

Schedule 4 [1] makes a consequential amendment.

Issues Considered by the Committee

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

Issue: Oppressive official powers; Freedom of Speech and Right to Peaceful Assembly – Part 4 – Facilitation of Major Events – clause 46 (4)(e) – Directions to leave:

24. Clause 46 (4) of Part 4, provides that an authorised officer may direct a person to leave a part of a major event venue or facility if the person is not authorised by a ticket or permit or the officer believes on reasonable grounds that:
- (a) the person is contravening or has contravened any provision of the proposed Act or the regulations or is committing or has committed any other offence at the major event venue or facility, or
 - (b) the person is failing or has failed to comply with a notice or direction referred to in proposed section 43, or
 - (c) the person is failing or has failed to comply with a request: (i) to open any bag, container or other thing in the person's possession in order that its contents may be inspected, and (ii) to permit any thing in the person's possession, and the contents of any such thing, to be inspected, or
 - (d) the person is causing a significant disruption or inconvenience or behaving in an offensive manner or in a manner likely to endanger the person or another person, or
 - (e) the person is **about to contravene a provision** of the proposed Act or the regulations at a major event venue or facility.
25. The proposed section makes it an offence to fail to comply with such a direction under clause 46 (5). A person who fails to comply may be removed from the major event venue or facility by an authorised officer under clause 46 (6). Reasonable force may be used to effect the person's removal under clause 46 (7).

- 26. The Committee appreciates the need for people to behave in a safe and orderly manner at major events and understands the provisions for a person who has contravened a provision, or has failed to comply with a request or direction, or is causing a significant disruption or behaving in an offensive manner, or in a manner likely to endanger the person or another person as set out under clauses 46 (4) (a) to (d) above.**
- 27. However, the Committee is concerned with the scope of clause 46 (4)(e), concerning the person who “*is about to contravene* a provision of this Act or the regulations” but who has not already contravened a provision or is not contravening a provision yet.**
- 28. The Committee, therefore, holds concerns that clause 46 (4)(e) of Part 4, could appear oppressive and may trespass unduly on individual rights and liberties, with the potentially unintended impact on the right to free speech¹ and the right to peaceful assembly², when the person has not yet contravened a provision. Accordingly, the Committee refers this to Parliament.**

Issue: Property – use or enjoyment of land – Part 4: Facilitation of Major Events – clause 61 – No liability in nuisance:

29. Clause 61 provides that anything done pursuant to the proposed Act and the regulations does not constitute a nuisance.
30. The Committee notes that the tort of nuisance is committed by a person who unlawfully interferes with a person’s use or enjoyment of land, or in connection with it. Examples of such interferences which may amount to nuisance include noise, smells, pollution of air, water and vibration.

- 31. However, given the public interest nature of the specific major event and the temporary nature and period of a major event, the Committee does not consider clause 61 to be an undue trespass on personal rights and liberties.**

Issue: Denial of Compensation – Part 4: Facilitation of Major Events – clause 62 – Compensation not payable in respect of major event-related matters:

32. Clause 62 (1) of Part 4 provides that compensation is not payable by or on behalf of the State, an authority of the State, a local council or an officer, employee or agent of the State, an authority of the State or a local council, for an act or omission that is a major event-related matter or that arises (directly or indirectly) from a major event-related matter.
33. The Committee is usually concerned with any amendments that may involve a denial of compensation. However, on this occasion, clause 62 (2) provides for some conditions or limitations to clause 62 (1) when it may not be applicable, such as when clause 62 (2) refers to subsection (1):

(a) applies only in respect of acts done or omitted to be done in good faith, and

¹ Freedom of expression as established by Article 19 of the *International Covenant on Civil and Political Rights*.

² Right of peaceful assembly as established by Article 21 of the *International Covenant on Civil and Political Rights*.

(b) does not apply to acts or omissions that cause personal injury to a person or the death of a person. Subsection (3) also states that subsection (1) does not affect compensation payable under any indemnity given, or other agreement made, by the promoter of the major event or a person referred to in subsection (1), that expressly relates to a major event-related matter.

34. Therefore, by reading clause 62 (2) in conjunction with clause 62 (1) of Part 4, the Committee does not find clause 62 (1) trespasses unduly on personal rights and liberties.

Insufficiently defined administrative powers [s 8A(1)(b)(ii) LRA]

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(b),(c) Personal conduct; clause 45 (4)(b),(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(b),(c) Directions to leave:

35. Part 4, clause 44 makes it an offence for a person at a major event venue or facility: (a) to use indecent, obscene or threatening language, or (b) to behave in an offensive or indecent manner, or (c) to cause serious alarm or affront to a person by disorderly conduct, or (d) to obstruct a person in the performance of the person's work or duties, or (e) to fail to comply with a reasonable request or direction given for the purpose of securing good order and management and enjoyment of a major event venue or facility, or any part of a major event venue or facility, by the responsible authority concerned or an authorised officer.

36. In the above section, under clause 44 (2), authorised officer means any of the following who have been authorised in writing by the responsible authority for the major event concerned for the purposes of this section: (a) police officer, (b) an officer or employee of a government agency, (c) a person, or a member of a class of persons, prescribed by the regulations for the purposes of this definition.

37. Clause 45 provides that a person's entry to a major event or facility is subject to the condition that the person must undergo specified searches if requested. A failure to comply with such a request is not an offence. However, a person who refuses such a request may be excluded from entry to the major event venue or facility or part of the major event venue or facility.

38. However, clause 45 (3) also provides that reasonable force may be used to effect the person's exclusion. In addition to a police officer being an authorised officer under subclause (4)(a), clauses 45 (4)(b) and (c) also enable an authorised officer to include (b) an officer or employee of a government agency, (c) a person, or a member of a class of persons, prescribed by the regulations for the purposes of this definition.

39. The Committee is concerned that under clauses 44 (2)(b) and (c) and 45 (4)(b) and (c), an authorised officer could include 'an officer or employee of a government agency' and 'a person, or a member of a class of persons, prescribed by the regulations', which appears quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 45 (3).

40. Clause 46 provides that an authorised officer may direct a person to leave a part of a major event venue or facility if the person is not authorised by a ticket or permit or the officer believes on reasonable grounds that the person: is contravening or has contravened any provision of the proposed Act or the regulations; has committed any other offence at the major event venue or facility; is failing or has failed to comply with a notice or direction in proposed section 43; is failing or has failed to comply with a request with regard to searches of any thing in the person's possession; is causing a significant disruption or inconvenience or behaving in an offensive manner or in a manner likely to endanger the person or another person.
41. The proposed section makes it an offence to fail to comply with such a direction. A person who fails to comply may be removed from the major event venue or facility by an authorised officer. Reasonable force may be used to effect the person's removal.
42. In addition to a police officer being an authorised officer under subclause (8)(a), clauses 46 (8)(b) and (c) also enable an authorised officer to include (b) an officer or employee of a government agency, (c) a person, or a member of a class of persons, prescribed by the regulations for the purposes of this definition.

- 43. The Committee is concerned that an authorised officer under clauses 46 (8)(b) and (c), 'an officer or employee of a government agency' and 'a person, or a member of a class of persons, prescribed by the regulations' appear quite broad, without the requirements regarding qualifications, training or attributes of the person to be an authorised officer, especially if they could exercise the use of reasonable force in exercising their function under clause 46 (7) and that it becomes an offence under clause 46 (5) when a person fails to comply with a direction under this proposed section.**
- 44. The Committee refers to Parliament the question of whether the discretion to appoint authorised persons under the above clauses 44(2)(b) and (c); 45 (4)(b) and (c); and 46 (8)(b) and (c), without the requirements regarding qualifications, training or attributes, could make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.**

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

Issue: Matters which should be regulated by Parliament - Part 2: Major Events – clause 5 – declaration of major event by regulation; Part 3: Major Event Authorities – clause 8 – establishment of major event authorities by regulations; and Part 4: Facilitation of Major Events – Division 5 Safety and crowd management at major events – clause 43 (7)(g) – definition of *prohibited thing*:

45. Part 2 and clause 5 provide that the regulations may declare an event to be a major event for the purposes of the proposed Act. The Minister administering the proposed Act may recommend the making of such a regulation only if the Minister has considered: (a) the nature of the event, and (b) the number of people expected to attend or participate in the event, and (c) whether it is in the public interest for the event to be declared a major event. Clause 6 provides that regulations declaring a major event must designate a responsible authority for the event. Clause 7 provides for the appointment of advisory committees to the responsible authority for a major event.

46. Part 3, clause 8 enables regulations to establish a corporation and constitute it as a major event authority for the purposes of a specified major event.

47. The Committee is concerned that there may be a significant delegation of legislative power under Part 2, clause 5; and Part 3, clause 8; by allowing:

- regulations to declare an event to be a major event;
- providing for the Minister administering the proposed Act to recommend the making of such a regulation;
- regulations declaring a major event could designate a responsible authority for the event;
- regulations to establish a corporation as a major event authority.

48. In relation to the definition of 'prohibited thing' under this section, clause 43 (7)(g) reads: "any other thing prescribed by the regulations for the purposes of this definition".

49. The Committee regards that important definition of words in an Act such as the definition of a '*prohibited thing*' should be matters regulated by Parliament under an amendment legislation rather than to be prescribed by regulations.

50. The Committee also notes that the ability of Parliament to effectively scrutinise the criteria for the proper consideration of declaring an event to be a major event and debate on whether it is in the public interest for the event to be declared a major event, is dependant on Parliament sitting rather than through regulations made when Parliament may not be sitting.

51. Therefore, the Committee asks Parliament to consider whether clause 5 of Part 2; clause 8 of Part 3; and clause 43 (7)(g) of Part 4, may constitute as an inappropriate delegation of legislative power.

Issue: Insufficient criteria regarding the scope of persons to whom a power may be delegated – Part 4: Facilitation of Major Events – clause 44 (2)(c) Personal conduct; clause 45 (4)(c) Request to undergo search as condition of entry to major event venue or facility; and clause 46 (8)(c) Directions to leave:

52. The Committee notes that a person or a member of a class of persons could be prescribed by the regulations for the definition of 'authorise officer' where authorised officers will carry out a significant function for the effective operation of these provisions under Part 4.

53. Therefore, the Committee also refers to Parliament the question as to whether it is an appropriate delegation of legislative power to allow these significant matters to be conducted by a person or a member of a class of persons to be prescribed by regulation under clauses 44(2)(c); 45 (4)(c); and 46 (8)(c), without requirements concerning their qualifications, training or attributes.

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

Issue: Enabling declarations influencing the exercise of powers without any obligation for them to be tabled in Parliament or subject to disallowance – Part 4 – Division 8 *Protection of the Environment Operations Act 1997* – clause 57
Modification of environment impacts:

54. Clause 57 will enable a responsible authority for a major event, after consulting with the Environment Protection Authority, to declare that a person may carry out activities associated with the major event on such days during the major event period and during such hours as are specified in the declaration. Such a declaration has effect despite the terms of any other Act or statutory instrument, any approval or other authorisation given under any other Act or statutory instrument, or any restriction affecting the land specified in the declaration. The declaration is to be published in the Gazette and the declaration takes effect on the day it is published in the Gazette. The responsible authority may amend or repeal a declaration in the same way as it may make a declaration.

55. The Committee refers to Parliament the question as to whether the making of such declarations under clause 57, which would have effect despite the terms of any other Act or statutory instrument, and not disallowable by the Parliament, may represent an exercise of legislative power with insufficient parliamentary scrutiny.

56. The Committee considers that any such modification of environmental impacts may be more appropriately made by an amending legislation or by regulations rather than through a declaration made by the responsible authority for the major event, especially if the modifications will have effect despite the terms of any other Act or statutory instrument.

The Committee makes no further comment on this Bill.

3. PROTECTION OF PUBLIC OWNERSHIP BILL 2009*

Date Introduced: 10 September 2009
House Introduced: Legislative Council
Minister Responsible: Dr John Kaye MLC
Portfolio: The Greens

Purpose and Description

1. This Bill prevents, without the approval of Parliament, the privatisation of publicly-owned assets or agencies or of services provided by those agencies; and for other purposes.
2. It intends to prevent, without the consent of both houses of Parliament, the sale of any publicly owned asset, corporation or undertaking where the value of the asset is greater than \$1 million. It aims to prevent the outsourcing of public services and other activities with a cost or income worth more than \$1 million and it also aims to prevent, without the consent of both houses of Parliament, the sale, lease or disposal of travelling stock reserves.
3. This Bill also prevents the sale of public education land unless the public education authority has entered into a contract to purchase land of equal or greater value in the same locality. It prevents the leasing of land owned by a public education authority if it is required for a public education purpose. If it is not required for public education purpose, it may be used only for another public sector purpose.

Background

4. According to the Second Reading speech, this Bill does not prevent the sale of major public assets or services. It requires the Government to submit its privatisation plans to Parliament for the approval of both Houses to ensure appropriate levels of debate and public involvement in those decisions.
5. This Bill is a response to the recent debates on privatising prisons; privatising travelling stock routes and the waste services network; transport and ferries; and the electricity industry.
6. In 1999, two provisions were inserted into the *State Owned Corporations Act 1983* and the *Energy Services Corporations Act 1995*. Section 20Y of the *State Owned Corporations Act 1983* states that a main undertaking of a statutory state-owned corporation can be sold or disposed of with the prior written approval of the voting shareholding Ministers. Yet, section 11 of the *Energy Services Corporation Act 1995* prohibits the privatisation of an energy services corporation. However, the privatisation plan would not be affected by the provision as it would not involve the transfer of shares in the distribution or generation companies. Therefore, it avoids the provision of section 11 of the *Energy Services Corporation Act 1995*.
7. This Bill seeks to rectify that gap by ensuring scrutiny of the power transactions.

8. The Second Reading speech referred to the mini-budget delivered on 11 November 2008, where an item for the Government was \$239 million in accelerated land sales from public education holdings from public schools and TAFE colleges.
9. In the Treasurer's second reading speech on the mini-budget, he identified Seaforth TAFE and the Hurlstone Agricultural High School in Glenfield in south-western Sydney as target sites for the accelerated sale of land. The Hurlstone Agricultural High School fought against the proposed sale. Sheep grazier organisations and other organisations, parents, students, the Teachers Union and the community have been fighting the sale because they are concerned about the impact on agricultural education in Sydney and New South Wales, and also because of the heritage, green space and for the support of agriculture within the Sydney Basin.
10. The Department of Education and Training's memorandum had identified all public schools with a land-holding of more than six hectares and all public primary schools with a land-holding of more than three hectares as having surplus land or the land was "surplus to requirements".
11. However, in July 2009, the Minister for Education and Training stated that there would be no major land sell-offs.

The Bill

12. The object of this Bill is to prevent, without the approval of Parliament, the privatisation of publicly-owned assets or agencies or of services provided by those agencies and to place restrictions on the sale and use of land owned by a public education authority.

13. Outline of provisions

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

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

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides that certain publicly-owned assets are not to be sold, leased or otherwise disposed of, without Parliamentary mandate. This provision will not apply to a sale, lease or other disposal to another public authority, any entity owned by a public authority or any other entity owned by the State or if the value of the things being sold, leased or disposed of is less than \$1,000,000.

Clause 5 provides that a travelling stock reserve must not be sold, leased or otherwise disposed of, or dealt with in any way that prevents public access to the reserve, without Parliamentary mandate.

Clause 6 places restrictions on the sale and use of land owned by a public education authority. Such land must not be sold unless the public education authority has entered into a contract for the purchase of similar land. Such land must not be leased, or otherwise allowed to be used, unless the land is not required for public education purposes and is to be used for another public purpose. The provision also requires records relating to these activities to be kept and an annual report to be prepared and tabled in Parliament.

Clause 7 restricts outsourcing by public authorities to arrangements that have been approved by Parliament and arrangements that will cost, or earn, the public authority less than \$1,000,000 during each year that the arrangements are in place.

Clause 8 provides that proposed section 7 does not apply in respect of any arrangements that are in place before the commencement of the proposed Act.

Issues Considered by the Committee

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.

4. REAL PROPERTY AMENDMENT (LAND TRANSACTIONS) BILL 2009

Date Introduced: 10 September 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon Tony Kelly MLC
Portfolio: Lands

Purpose and Description

1. The object of this Bill is to amend the *Real Property Act 1900*:
 - (a) to enable the electronic lodgment of a notice of sale; and
 - (b) so that the Registrar-General may require a certificate of correctness in relation to a notice of sale (whether or not the notice is lodged electronically); and
 - (c) to clarify the circumstances in which compensation may be payable from the Torrens Assurance Fund in relation to the details supplied in a notice of sale; and
 - (d) to make other minor amendments.

Background

2. This Bill amends the *Real Property Act 1900* to enable a Notice of Sale form to be lodged electronically prior to, or in conjunction with the lodgment of certain land dealings. Accordingly, the Bill allows for the implementation of the new electronic system that was developed by Land and Property Information, a division of the Land Property Management Authority.
3. As stated in the Agreement in Principle Speech, the electronic use of the Notice of Sale form will assist parties in conveyancing transactions and will improve the integrity and accuracy of land records held by the State, its agencies and authorities.
4. A Notice of Sale form is required to accompany all transfers and other dealings that change the ownership of land. It contains details of the transaction, such as the settlement date and any sale price and provides an updated address for the service of notices on the new owner. Information in the Notice of Sale form is used by agencies such as local councils, water authorities and the Office of State Revenue and the Valuer-General to assess rates and taxes.
5. As also stated in the Agreement in Principle Speech,

The electronic notice of sale system will have a variety of benefits for both government and industry. For the authority, there will be savings through the elimination of the need for data entry. This will reduce delays and enable the distribution of information sooner. For the conveyancing industry, the availability of an electronic form will enable industry to integrate the form with existing internal systems. As some information will be prepopulated from information provided by Land and Property Information, there will be improvements in the quality of data provided, reducing the possibility of error. This in turn will reduce the likelihood of errors and

Real Property Amendment (Land Transactions) Bill 2009

delays in registration of the accompanying dealings. The benefits for rating agencies and the Office of State Revenue are obvious. Important ownership information will be provided faster and with a greater degree of accuracy.

6. Under the current legislation, the Registrar-General may refuse to accept a transfer or other dealing that would change the name of the owner of land unless the dealing is accompanied by a fully completed Notice of Sale form (section 39 *Real Property Act 1900*). However, the proposed amendments provide that this requirement will be satisfied if, before the dealing is presented for registration, a related notice is lodged electronically.
7. Further, given the importance of the information contained in the notice of sale and the reliance that is placed on it by a variety of agencies, the Bill also requires certification of the information in the Notice of Sale form.
8. Finally, the Bill amends section 129 of the *Real Property Act 1900* to clarify the circumstances in which compensation may be payable from the Torrens Assurance Fund in relation to the information provided in a Notice of Sale form.

The Bill

9. Outline of provisions

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

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

Schedule 1 Amendment of Real Property Act 1900 No 25

Section 39 (1B) of the *Real Property Act 1900* provides that the Registrar-General may:

- (a) refuse to accept for registration certain land dealings or applications relating to a change in the name of a registered proprietor, or
- (b) refuse to register such a dealing or application, or
- (c) reject such a dealing or application, if it is not accompanied by a fully completed notice in the approved form. The current approved form is known as a notice of sale.

Schedule 1 [1] provides that a dealing or application is taken to be accompanied by a notice of sale if, before the presentation of the dealing or application, a notice relating to the dealing or application is lodged electronically in a form and in the manner approved by the Registrar-General.

Schedule 1 [3] provides that the Registrar-General may reject, or may refuse to accept or to take any action in relation to, any dealing accompanied by a notice (in accordance with section 39 (1B) of the *Real Property Act 1900*) if a certificate of correctness in relation to that notice is not completed in the specified manner.

Schedule 1 [4] makes a consequential amendment.

Schedule 1 [5] and [6] clarify that compensation is not payable in relation to any loss or damage arising from the provision by the Registrar-General of information supplied in a

notice of sale except in relation to an error of the Registrar-General in recording the details supplied in such a notice.

Schedule 1 [8] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [9] contains a transitional provision.

Schedule 1 [2] and [7] make statute law revision amendments.

Issues Considered by the Committee

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

Issue: Proposed Schedule 1 [5] and [6] amendment of Real Property Act 1900 - Section 129 - Denial of Compensation

10. The proposed amendments in Schedules 1 [5] and [6] clarify that compensation is not payable in relation to any loss arising from the provision by the Registrar-General of information supplied in a notice of sale, except in relation to an error of the Registrar-General in recording the details supplied in the notice.
11. Accordingly, the Bill amends section 129 *Real Property Act 1900*. Section 129 *Real Property Act 1900* currently reads that any person who suffers loss or damage as a result of the operation of this Act in respect of any land is entitled to payment of compensation from the Torrens Assurance Fund, where the loss or damage arises from any of the following circumstances:
 - (a) any act or omission of the Registrar-General in the execution or performance of his or her functions or duties under this Act in relation to the land; or
 - (b) the registration (otherwise than under section 45E) of some other person as proprietor of the land, or of any estate or interest in the land; or
 - (c) any error, misdescription or omission in the Register in relation to the land; or
 - (d) the land having been brought under the provisions of this Act; or
 - (e) the person having been deprived of the land, or of any estate or interest in the land, as a consequence of fraud; or
 - (f) an error or omission in an official search in relation to the land, is entitled to payment of compensation from the Torrens Assurance Fund.
12. Proposed Schedule 1 [5] inserts section 129(1)(g), which states that compensation is payable where loss or damage arises from any error of the Registrar-General in recording details supplied in the notice referred to in section 39 (1B) *Real Property Act 1900*. Section 39(1B) of the *Real Property Act 1900* provides that the Registrar-General may refuse to accept for registration a dealing (purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act) or an application to effect a change in the name of a registered proprietor; or refuse to register such a dealing or application; or reject such a dealing or application if not accompanied by a fully completed notice in the approved form.

13. Proposed Schedule 1 [6] inserts section 129(2)(p), which states that compensation is not payable in relation to any loss or damage suffered by any person where the loss or damage arises from the provision by the Registrar-General of information supplied in the notice referred to in section 39 (1B), subject to subsection (1) (g).
14. The Committee notes its comments in Legislation Review Digest No 4 of 2009 regarding section 129(2)(n) *Real Property Act 1900*, which provided that where the loss or damage arises from the improper exercise of a power of sale, compensation will not be payable from the Torrens Assurance Fund. The Committee referred this provision to Parliament due to concerns that a mortgagor's interest may be unduly trespassed if their right to compensation was not adequately protected under the proposed section 129 (2) (n).

15. Schedule 1 [6], proposed section 129(2)(p) limits compensation payable when the loss or damage arises from the provision by the Registrar-General of information supplied in the notice referred to in section 39(1B). However the Committee is of the view that this provision will not unduly trespass on personal rights and liberties, particularly given proposed section 129(1)(g), which will provide compensation for loss or damage resulting from an error of the Registrar General in recording details supplied in the notice.

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

Issue: Clause 2 - Commencement by proclamation - Provide the executive with unfettered control over the commencement of an Act.

16. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation, which may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts advice from the Minister for Lands that Clause 2 was included to allow the conveyancing industry enough time for training in, and the integration of, the new electronic system. The Minister also advised that Clause 2 was also included to allow for a number of actions, for example the integration of electronic Notice of Sale forms into the existing systems of Information Brokers; the development of new manual forms to fulfil the requirement that all Notices of Sale forms be certified as correct; and the amendment of several land dealing forms to include an additional panel to be completed if a Notice of Sale form has been lodged electronically.

17. The Committee accepts the advice receive above and has not identified any further issues under s 8(1)(b)(iv) LRA

The Committee makes no further comment on this Bill.

5. SHOP TRADING AMENDMENT BILL 2009

Date Introduced:	11 September 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Transport

Purpose and Description

1. The object of this Bill is to amend the *Shop Trading Act 2008* (the Act) and the *Shop Trading Regulation 2009*:
 - (a) to limit the circumstances in which exemptions to enable trading on restricted trading days (such as Christmas Day) may be granted and to restrict the right to apply for such an exemption to occupiers of shops,
 - (b) to make other amendments relating to applications for such exemptions,
 - (c) to enable third parties to appeal to the Administrative Decisions Tribunal for reviews of decisions relating to such exemptions,
 - (d) to enable inspectors to require records relating to shop employees and business receipts to be produced for enforcement purposes,
 - (e) to render void any provision of a lease (or related agreement or arrangement) that requires an occupier of a shop to keep the shop open on a restricted trading day,
 - (f) to make other amendments of a minor or consequential nature and to enact savings and transitional provisions consequent on the enactment of the proposed Act.

Background

2. The Act, which was considered in Legislation Review Digest No 8 of 2008 commenced on 1 July 2008 and restricts retail trading on Christmas Day, Boxing Day, Good Friday, Easter Sunday and the morning of Anzac Day for certain shops. Since the commencement of operation of the Act, the Commonwealth's *Fair Work Act 2009* has come into force, which regulates the industrial relations aspects of public holiday trading for many retailers and retail industry workers.
3. The Act provides that retailers may apply to the Director General for an exemption to trade on any of the restricted trading days. The Bill provides further guidance to retailers seeking an exemption to open on one of these days. As stated in the Agreement in Principle Speech:

...the Act has been in operation now for more than one year. This period of time has provided an opportunity for business owners, retail workers and the community to witness the operation of the legislation. During this time, it has become apparent that amendments were required to provide greater certainty as to the operation of the Act. Divergent determinations were made with respect to the restricted trading days. The changes contained in this bill will provide further guidance to retailers who may be considering seeking an exemption to open their doors on a restricted trading day.

4. Accordingly, the Bill amends section 10 of the Act to provide that exemptions should only be granted by the Director General if satisfied that it is in the “exceptional circumstances of the case in the public interest to do so”, having regard to a number of matters set out in proposed section 10. The Bill amends the Act to provide that “Director General” refers to the Director General of the Department of Services, Technology and Administration.
5. The Bill retains the criteria established under the Act for the Director General to consider in the approval process but also adds new criterion for consideration. For example the Bill obliges the decision-maker to recognise the impact of approving the application on small businesses operating in the area.
6. The Bill also abolishes the scope for the Director General to consider any other matters in the decision-making process. As stated in the Agreement in Principle Speech, the proposed amendment will more closely align the outcome of decisions with the criteria that Parliament decided should be the relevant considerations when determining applications.
7. The Bill also enables the Director General to request a retailer to provide information and documents in support of an exemption application (proposed section 11(3)). Proposed section 11 also provides that applications must be made at least 28 days before the first day for which an exemption is sought. As stated in the Agreement in Principle Speech, this amendment responds to concerns that exemptions were being sought at a very late stage.
8. The Bill provides that applications must be subject to a 21-day public review process, with a 40-day period in which a decision must be made. It provides that if the Director General does not determine an application before the end of the 40-day period, the Director General will be taken to have refused to grant the exemption.
9. The Act placed an obligation on retailers who gained an exemption to only use workers who willingly agreed to work on the restricted trading day. Currently this condition does not apply to exemptions carried over from the *Shops and Industries Act 1962*. Accordingly, the Bill extends this protection to workers covered by the *Shops and Industries Act 1962* exemptions.
10. The Bill also amends section 15 of the Act to provide powers to inspectors with powers under Part 4 of Chapter 7 of the *Industrial Relations Act 1996* to compel an occupier of a shop to provide documents such as roster sheets and commercial records for the purpose of investigating a possible contravention of the Act or regulations.
11. Finally, proposed section 22A of the Bill provides that a provision of a retail lease is void to the extent that it requires an occupier to keep the shop open on a restricted trading day. According to the Agreement in Principle Speech, this amendment responds to situations where owners of shopping centres used retail leases to require stores to open on restricted trading days.

12. Outline of provisions

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

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

Schedule 1 Amendment of Shop Trading Act 2008 No 49

Schedule 1 [1] amends the long title of the Principal Act to change the reference to de-regulation of shop opening hours and restricted trading days to fair regulation of shop opening hours and restricted trading days.

Schedule 1 [2] amends section 3 of the Principal Act to update a definition and inserts a definition of Departmental website.

Schedule 1 [3] substitutes sections 10 and 11 of the Principal Act and inserts new sections 11A–11C. Proposed section 10 re-enacts the current provision relating to exemptions from shop trading restrictions given by the Director-General of the Department of Services, Technology and Administration (the Director-General) with some changes.

The new section requires the Director-General not to grant an exemption unless satisfied that it is, in the exceptional circumstances of the case in the public interest to do so, after considering specified matters. It removes the discretion of the Director-General to consider any other matters he or she thinks fit and to grant an exemption without an application being made. An application may now only be made by the occupier of a shop. It also expressly requires the Director-General to consider the likely effect of the exemption on small businesses.

Proposed section 11 requires applications for exemptions to be made no later than 28 days before the day of the exemption. Proposed section 11A requires the Director-General to publish exemption orders and reasons for decisions on exemption applications on the website of the Department of Services, Technology and Administration. Proposed section 11B deems applications to be refused (for the purpose of applying for a review) if a decision has not been made after 40 days. Proposed section 11C applies the provisions relating to applications for exemptions to applications to amend or revoke exemption orders.

Schedule 1 [4] amends section 12 of the Principal Act to provide for the review by the Administrative Decisions Tribunal of a determination by the Director-General to refuse to amend an exemption.

Schedule 1 [5] amends section 12 of the Principal Act to allow third parties, having sufficient interest in a matter, to appeal to the Administrative Decisions Tribunal for a review of a determination by the Director-General to refuse to grant, amend or revoke an exemption or as to the conditions of an exemption.

Schedule 1 [6] amends section 15 of the Principal Act to confer on inspectors additional powers to require documents to be produced for the purposes of investigating possible contraventions of that Act or the regulations under that Act.

Schedule 1 [7] amends section 20 of the Principal Act to update a reference.

Schedule 1 [8] inserts proposed section 22A into the Principal Act. The proposed section makes a provision of a lease void to the extent to which it requires the occupier of a shop to keep the shop open on a restricted trading day. The proposed section also extends to provisions in other arrangements or agreements between occupiers and owners or lessees of shop premises.

Schedule 1 [9] amends Schedule 2 to the Principal Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [10] amends Schedule 2 to the Principal Act to make it clear that the provision preventing employees from being coerced into working on restricted trading days applies to previous exemptions continued under that Act. The amendment also enables occupiers of shops subject to such an exemption to apply for an order amending the exemption.

Schedule 1 [11] amends Schedule 2 to the Principal Act to insert savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Shop Trading Regulation 2009

Schedule 2 amends the *Shop Trading Regulation 2009* to require the Director-General to publicly exhibit applications to exempt shops from the prohibition on trading on restricted trading days for 21 days and to consider any public comment received during the exhibition period. The Schedule also prescribes the form for an exemption application.

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

Part Two – Regulations

SECTION A: REGULATIONS FOR THE SPECIAL ATTENTION OF PARLIAMENT UNDER S 9(1)(B) OF THE *LEGISLATION REVIEW ACT 1987*

Consumer, Trader and Tenancy Tribunal Regulation 2009
--

Recommendation

That the Committee:

- 1) for the purposes of s 9(1A) of the *Legislation Review Act 1987*, resolve to refer this Regulation to Parliament.

Grounds for comment

Personal rights/liberties	<p>Ill-Defined and Wide Powers:</p> <p>The Committee refers to Parliament as to whether the unqualified broadness and ill-defined discretion of clause 7 (2) of Part 2 makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers. This clause provides that the Chairperson may dispense with compliance with any requirements of this Regulation, which relates to the Regulation providing procedural requirements to ensure fairness and predictability.</p> <p>The Committee refers to Parliament as to whether the wide powers under clause 9 (f) of Part 2 makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers. Clause 9 (f) provides that a Registrar is to have the section 54 (1) and (2) functions of a member or the Tribunal. The concern relates to the clause not only conferring on a Registrar the obligation to promote conciliation but also, it allows a Registrar to determine a matter by inference.</p> <p>Excludes Review – Non-Reviewable Decisions:</p> <p>The Committee refers to Parliament as to</p>
---------------------------	--

	<p>whether clause 25 (2) of Part 6 makes a person's rights, liberties or obligations unduly dependent on non-reviewable decisions. The concern relates to the execution of such a warrant should not, of itself, be a barrier to the rehearing of an application for termination as it should only be one factor for consideration.</p> <p>Procedural Fairness:</p> <p>The Committee refers clause 26 of Part 7 to Parliament as to whether it may deny procedural fairness and may constitute a potential form of undue trespass on personal rights and liberties, by providing that a decision could be given and enforced against a person who may not have been served with notice of the proceedings. Clause 26 of Part 7 provides that for the purposes of section 26 (1) of the Act, the classes of proceedings that are prescribed are those in the Residential Parks Division, Retirement Villages Division, Strata and Community Schemes Division, Tenancy Division and Social Housing Division in respect of which 2 or more persons have joint liability. Section 26 of the Act provides that in relation to prescribed classes of proceedings, where 2 or more are jointly liable, it is sufficient if any of them is served with notice of the proceedings and a decision in the proceedings may be enforced against the person or persons subject to the liability.</p>
Business impact	
Objects/spirit of Act	
Alternatives/effectiveness	
Duplicates/overlaps/conflicts	
Needs elucidation	
SLA, ss 4,5,6, Sched 1, 2	<p>Received Regulatory Impact Statement (RIS) and seven submissions (together with a copy of the summary of submissions and the response from the NSW Office of Fair Trading / Department of Commerce in relation to stakeholders' submissions). However, the response from the Office of Fair Trading to the Legal Aid NSW submission in its summary of submissions did not address specific details.</p>
Other	

Explanatory Note

This Regulation has been made under the staged repeal process established by the *Subordinate Legislation Act 1989*, and has commenced on 1 September 2009. The aim of the Regulation is to provide a framework for the efficient and cost-effective operation of the Consumer, Trader and Tenancy Tribunal.

The object of this Regulation is to remake, with some amendments, the provisions of the *Consumer, Trader and Tenancy Tribunal Regulation 2002*, which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation provides for records of the Consumer, Trader and Tenancy Tribunal (***the Tribunal***) to be provided to a court when a matter is subject to an appeal.

This Regulation also makes provision with respect to the following:

- (a) the members of the Tribunal, assessors and the Registrar of the Tribunal,
- (b) the making of applications to the Tribunal,
- (c) the representation of parties in proceedings of the Tribunal,
- (d) the awarding of costs,
- (e) the rehearing of completed proceedings,
- (f) procedural matters with respect to the Tribunal,
- (g) the records of the Tribunal and access to those records,
- (h) the fees payable,
- (i) the transfer of proceedings to the Tribunal,
- (j) the making of objections to the participation of a member in proceedings,
- (k) the interest payable on a judgment debt,
- (l) the service of documents,
- (m) savings and formal matters.

This Regulation is made under the *Consumer, Trader and Tenancy Tribunal Act 2001*, including sections 12 (5), 16 (5), 18, 20 (1) (a1), 22 (2) (b), 23 (2), 24 (2), 26 (1), 34 (2), 36 (2), 40 (2), 43 (6), 49 (1) and (2), 52 (2) (c), 53, 60, 68 (1), (5) (a) (ii), (9A), (13) (a) and (14), 80A and 86 (the general regulation-making power).

Comment

1. The repeal of the Regulation was previously deferred twice as the *Consumer, Trader and Tenancy Tribunal Act 2001* was the subject of a statutory review process and the Tribunal was also subject to an operational review. Both of these reviews had implications for the Regulation.
2. A draft regulation and RIS were prepared and released for public comment. Seven submissions were received. The RIS was compliant with the better regulation principles as advised by the Better Regulation Office in the Department of Premier and Cabinet.
3. The Regulatory Impact Statement (RIS) and seven submissions were received on 27 August 2009, (together with a copy of the summary of submissions and the response from the NSW Office of Fair Trading / Department of Commerce in relation to stakeholders' submissions). However, many of the comments and concerns raised in the submission from the Legal Aid NSW had not been specifically addressed. In relation to the comments made by Legal Aid NSW, the NSW Office of Fair Trading responded in general that: "It is not considered that the proposals are feasible at this point in time. Some of the proposals have the potential to reduce the Tribunal's flexibility and could increase the Tribunal's administrative burden. This could impact

untowardly on the Tribunal's ability to operate in an efficient and cost-effective manner... The remaining proposals will be kept on file for further consideration at a later point in time."

4. The following comments are based on some of the concerns arisen from the NSW Legal Aid's submission.

III-Defined And Wide Powers – Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers:

5. Clause 7 (2) of Part 2 provides that the Chairperson may dispense with compliance with any requirements of this Regulation, either before or after the occasion for compliance arises. The Committee notes the unqualified broadness and ill-defined discretion and refers to the submission already made by the NSW Legal Aid on this clause as it relates to the Regulation providing procedural requirements to ensure fairness and predictability. Accordingly, the Committee refers this to Parliament as to whether clause 7 (2) of Part 2 makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers.
6. Clause 9 (f) provides that a Registrar is to have the section 54 (1) and (2) functions of a member or the Tribunal. The Committee notes the concern raised in the NSW Legal Aid's submission which found that this does not just confer on a Registrar the obligation to promote conciliation but also, it allows a Registrar to determine a matter by inference. Section 54 (1) of the *Consumer, Trader and Tenancy Tribunal Act 2001* provides that before making an order **to determine** any matter that is the subject of proceedings, it is the duty of the Tribunal to use its best endeavours to bring the parties in the proceedings to a settlement that is acceptable to all the parties. **Determining a matter that is the subject of proceedings** is the fundamental work of **members** of the Tribunal (as set out under section 21 of the Act with regard to the Tribunal having jurisdiction to decide matters and under section 6 with regard to the Tribunal consisting of the listed classes of members).
7. The Committee also notes that work conducted by a Registrar under section 20(1)(a1) of the Act would be the work of a Registrar, despite otherwise being a function of a member of the Tribunal. The Committee shares the concern raised in the submission from NSW Legal Aid that this may lead to uncertainty or a lack of clarity involving section 67 appeals from a Tribunal decision with respect to a matter of law, and the right of a rehearing of any proceedings that have been heard and determined by the Tribunal (undertaken by a Registrar). Accordingly, the Committee refers this to Parliament as to whether the wide powers under clause 9 (f) of Part 2 makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers.

Excludes Merits Review – Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions:

8. Clause 25 (2) of Part 6 provides that a rehearing application cannot be made under section 68 of the Act in relation to proceedings in the Residential Parks Division, Retirement Villages Division, Tenancy Division or Social Housing Division in respect of which an order for the termination of a tenancy or residency has been made if a warrant of possession has been executed in relation that order. This remains the same as under the former clause 24 which has been now renumbered in the new Regulation.

9. However, the Committee notes that NSW Legal Aid's submission and the Tenants' Union of NSW submission have both raised objections in relation to clause 25 (2). NSW Legal Aid suggested that the execution of such a warrant should not, of itself, be a barrier to the rehearing of an application for termination as it should only be one factor for consideration. According to the NSW Legal Aid's submission: "It is common for premises to remain vacant or continue to house the tenant's uncollected goods for a period after a warrant has been executed. If a warrant has been executed, a primary factor for consideration in determining a rehearing application should be whether the tenant could be returned to the premises without interfering with the newly acquired rights of any innocent third person. This would be a matter for the Tribunal's discretion, and if the Tribunal is initially minded to grant the rehearing, a matter that can be addressed by the landlord".
10. The submission gave a case example: "Circumstances have arisen where the first notice of a tenant received of an application for termination, or of any proceedings, was 5 minutes before the execution of a warrant for possession. In the particular case, the landlord commenced termination proceedings pursuant to section 68 *Residential Tenancies Act 1987*. The section does not require a notice of termination, and none was served. The tenant received no copy of the application and so the matter was heard in the absence of the tenant. Orders for termination and immediate possession were given. A warrant was issued and executed within a day of the orders being made and without the tenant receiving written notice of the Tribunal's decision."
11. The Committee further notes the concerns raised in the submission from the Tenants' Union of NSW: "Orders for termination and an ensuing warrant for possession are the most extreme remedy available to landlords and property owners in the Tribunal. They lead to the displacement of tenants and residents, contribute to a transient and insecure housing market, and potentially lead to homelessness. Where such orders are made incorrectly, it should be the imperative of the Tribunal to facilitate satisfactory recourse, for all concerned, as quickly and efficiently as possible. The proposed exclusion to the rehearing procedure is inconsistent with this imperative."
12. They also contend that: "the exclusion appears to preclude rehearings of other orders, such as orders for the payment of money, where those orders were made in proceedings that resulted in termination orders and the execution of warrants. Where a tenancy is terminated and the tenant is ordered to pay the rent arrears, and the amount of the rent arrears is wrongly determined, the matter of the rent arrears should be able to be reheard, notwithstanding that the termination order has been enforced and the premises are no longer available for occupation...while the rehearing of a matter to which the subject premises are no longer available can present certain difficulties on matters of fact, such a rehearing should not be made impossible as a matter of law".
13. Therefore, the Committee refers to Parliament as to whether clause 25 (2) of Part 6 in this case makes a person's rights, liberties or obligations unduly dependent on non-reviewable decisions.

Procedural Fairness – Trespasses unduly on personal rights and liberties:

14. Clause 26 of Part 7 provides that for the purposes of section 26 (1) of the Act, the classes of proceedings that are prescribed are those in the Residential Parks

Division, Retirement Villages Division, Strata and Community Schemes Division, Tenancy Division and Social Housing Division in respect of which 2 or more persons have joint liability. Section 26 of the Act provides that in relation to prescribed classes of proceedings, where 2 or more are jointly liable, it is sufficient if any of them is served with notice of the proceedings and a decision in the proceedings may be enforced against the person or persons subject to the liability.

15. The submission from NSW Legal Aid explained that joint parties do not necessarily maintain their ties and the party that has not been served with a notice may not be able to rely on the other to inform them of the proceedings. Joint tenants of a group household tend to move apart and partners also separate.
16. The RIS stated that the objective is to “provide the Tribunal, Registry and parties to proceedings, with appropriate flexibility when giving notice to joint parties and to minimise unnecessary duplication of documentation”. The RIS proposed the remedy to address any unfairness with the right to expressly advise that all parties in a joint party arrangement to be given the required notices. However, a party who has not been served with notice of the proceedings would not be aware of the proceedings to ask that they be given notice.
17. Therefore, the Committee is of the view that this clause 26 of Part 7 may deny procedural fairness by providing that a decision could be given and enforced against a person who may not have been served with notice of the proceedings, and refers this to Parliament as a potential form of undue trespass on personal rights and liberties.
18. The Committee, for the purposes of s 9(1A) of the *Legislation Review Act 1987*, resolves to refer this report on the Regulation to Parliament.

Appendix 1: Index of Bills Reported on in 2009

	Digest Number
Aboriginal Land Rights Amendment Bill 2009	10
Animal Welfare Legislation Amendment Bill 2009	12
Appropriation Bill 2009	9
Appropriation (Budget Variations) Bill 2009	4
Appropriation (Parliament) Bill 2009	9
Appropriation (Special Offences) Bill 2009	9
Associations Incorporation Bill 2009	2
Barangaroo Delivery Authority Bill 2009	2
Biofuel (Ethanol Content) Amendment Bill 2009	3
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	11
Casino Control Amendment Bill 2009	9
Children and Young Persons (Care and Protection) Amendment Bill 2009	6
Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009	2
Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009	2
Civil Procedure Amendment (Transfer of Proceedings) Bill 2009	6
Coroners Bill 2009	8
Courts and Other Legislation Amendment Bill 2009	8
Crimes (Administration of Sentences) Amendment Bill 2009	10
Crimes (Administration of Sentences) Amendment (Private Contractors) Bill 2009	2
Crimes (Appeal and Review) Amendment Bill 2009	2
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	11
Crimes (Criminal Organisations Control) Bill 2009	5

	Digest Number
Crimes (Forensic Procedures) Amendment Bill 2009	7
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	11
Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Bill 2009	5
Criminal Legislation Amendment Bill 2009	6
Criminal Organisations Legislation Amendment Bill 2009	6
Education Amendment Bill 2009	3
Education Amendment (Educational Support For Children With Significant Learning Difficulties) Bill 2008*	1
Education Amendment (Publication of School Results) Bill 2009	9
Education Further Amendment (Publication of School Results) Bill 2009	11
Electricity Supply Amendment (Energy Savings) Bill 2009	7
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	8
Energy Legislation Amendment (Infrastructure Protection) Bill 2009	7
Fisheries Management Amendment Bill 2009	10
Food Amendment (Meat Grading) Bill 2008*	1
Game and Feral Animal Control Amendment Bill 2009	8
Garling Inquiry (Clinician and Community Council) Bill 2009*	5
Gas Supply Amendment (Ombudsman Scheme) Bill 2009	5
Government Information (Information Commissioner) Bill 2009	9
Government Information (Public Access) Bill 2009	9
Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009	9
Greyhound Racing Bill 2009	5
Harness Racing Bill 2009	5
Hawkesbury-Nepean River Bill 2009	4
Health Legislation Amendment Bill 2009	4

	Digest Number
Heritage Amendment Bill 2009	7
Home Building Amendment (Insurance) Bill 2009	6
Hurlstone Agricultural High School Site Bill 2009	3, 6
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009	4
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	7
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	2
Liquor Amendment (Special License) Conditions Bill 2008	1
Liquor Amendment (Temporary License Freeze) Bill 2009	11
Local Government Amendment (Planning and Reporting) Bill 2009	10
Major Events Bill 2009	12
Mining Amendment (Safeguarding Land And Water) Bill 2009*	7
Motor Accidents Compensation Amendment Bill 2009	6
Motor Accidents (Lifetime Care And Support) Amendment Bill 2009	7
Motor Sports (World Rally Championship) Bill 2009	9
NSW Lotteries (Authorised Transaction) Bill 2009	8
NSW Trustee and Guardian Bill 2009	8
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	2
National Parks and Wildlife (Broken Head Nature Reserve) Bill 2009	9
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	11
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	8
Parliamentary Remuneration Amendment (Salary Packaging) Bill 2009	10
Parking Space Levy Bill 2009	3
Personal Property Securities (Commonwealth Powers) Bill 2009	9
Protection of Public Ownership Bill 2009	12

	Digest Number
Racing Legislation Amendment Bill 2009	5
Real Property Amendment (Land Transactions) Bill 2009	12
Real Property and Conveyancing Legislation Amendment Bill 2009	4
Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009	8
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	10
Road Transport Legislation Amendment (Traffic Offence Detection) Bill 2009	9
Rookwood Necropolis Repeal Bill 2009	8
Rural Lands Protection Amendment Bill 2009	8
Shop Trading Amendment Bill 2009	12
State Emergency and Rescue Management Amendment Bill 2009	8
State Emergency Service Amendment Bill 2009	9
State Revenue Legislation Amendment Bill 2009	9
State Revenue Legislation Further Amendment Bill 2009	9
Statute Law (Miscellaneous Provisions) Bill 2009	9
Surveillance Devices Amendment (Validation) Bill 2009	4
Succession Amendment (Intestacy) Bill 2009	5
Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008	1
Transport Administration Amendment (CountryLink Pensioner Booking Fee Abolition) Bill 2009	3
Western Lands Amendment Bill 2008	1

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1		
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12	
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15	
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	8/08/09				10
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	6/02/09		9	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07	13/2/09	1		2
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1	
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7		
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13	
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	5/01/09		14	2
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07	22/01/09	1		2
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1, 2		
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1		
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2009

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Aboriginal Land Rights Amendment Bill 2009	N, R		N, R	N	
Animal Welfare Legislation Amendment Bill 2009		N			
Associations Incorporation Bill 2009		N, R			N, R
Barangaroo Delivery Authority Bill 2009	N				
Biofuel (Ethanol Content) Amendment Bill 2009	N			N	N, R
Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2009	R, N				
Courts and Other Legislation Amendment Bill 2009	R, N				
Crimes (Administration of Sentences) Amendment Bill 2009	R, N, C	N, R	N, R		
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2009	R, N				
Crimes (Criminal Organisations Control) Bill 2009	R, N		R		
Crimes (Forensic Procedures) Amendment Bill 2009	N				
Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009	R, N				
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	N				
Fisheries Management Amendment Bill 2009	R, N			N	
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Home Building Amendment (Insurance) Bill 2009	N				
Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009				N	
Land Acquisition (Just Terms Compensation) Amendment Bill 2009	N				
Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Bill 2009	N, R, C	R			
Liquor Amendment (Special Licence Conditions) Bill 2008				N, R	
Liquor Amendment (Temporary Licence Freeze) Bill 2009	R, N		R, N	R, N	
Major Events Bill 2009	R, N	R, N		R, N	R, N
Motor Accidents Compensation Amendment Bill 2009				N	
Motor Sports (World Rally Championship) Bill 2009	N				
NSW Lotteries (Authorised Transaction) Bill 2009	R, N				
Nation Building and Jobs Plan (State Infrastructure Delivery) Bill 2009	N		N	N	
Occupational Health and Safety Amendment (Authorised Representatives) Bill 2009	N				
Occupational Licensing Legislation Amendment (Regulatory Reform) Bill 2009	R, N				
Parking Space Levy Bill 2009				N	N, C
Racing Legislation Amendment Bill 2009				N	
Real Property Amendment (Land Transactions) Bill 2009	N			N	
Road Transport (General) Amendment (Consecutive Disqualification Periods) Bill 2009	N			N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Western Lands Amendment Bill 2008				R	

Key

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12	
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10	