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Legislation Review Committee

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
 - (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

- (1) The functions of the Committee with respect to regulations are:
 - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
 - (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (2) Further functions of the Committee are:
 - (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

GUIDE TO THE LEGISLATION REVIEW DIGEST

Part One – Bills

Section A: Comment on Bills

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament. Following a brief description of the Bill, the Committee considers each Bill against the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987* (see page 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. Criminal Assets Recovery Amendment Bill 2009

Issue: Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* - Retrospectivity

20. The Committee has concerns regarding the retrospective application of proposed Schedule 1, Part 4, in particular Clause 16 *Criminal Assets Recovery Act 1990* on personal rights and liberties, in particular the personal right to property. Accordingly, the Committee refers Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* to Parliament for its consideration.

Issue: Schedule 1, Part 4 Clause 18 *Criminal Assets Recovery Act 1990* – Denial of Compensation; Retrospectivity

25. The Committee considers that right to seek compensation is an important personal right and should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee notes that Schedule 1, Part 4, in particular Clause 18 of the Bill excludes the State from liability for various matters arising from the enactment of the proposed Act. Accordingly, the Committee refers to Parliament for its consideration whether proposed Schedule 1, Part 4, Clause 18 unduly trespasses on personal rights and liberties by removing the right to compensation (including retrospectively removing this personal right).

Issue: Clause 10A(4) *Criminal Assets Recovery Act 1990*; Section 22 *Criminal Assets Recovery Act 1990*; Schedule 1, Part 4, Clauses 19 and 20 *Criminal Assets Recovery Act 1990* – Procedural Fairness

27. The Committee notes that section 10A(4) has been introduced to respond to the concerns of the High Court regarding principles of procedural fairness in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission and Others*. Accordingly, the Committee notes that the proposed amendments in section 10A(4) provide the Supreme Court with a discretion to require the Commission to give notice of an application if thinks fit and under section 10A(4) such a person is entitled to appear to adduce evidence at the hearing of the application.

34. Although notice is required to be given to a person to whom an application for an assets forfeiture order application under current section 22(9) *Criminal Assets Recovery Act 1990*, the Committee notes that proposed section 22(1B) *Criminal Assets Recovery Act 1990* enables the Commission to apply for, and to be granted, an assets forfeiture order under the *Criminal Assets Recovery Act 1990* without first applying for or obtaining a restraining order. Given the significant impact of an assets forfeiture order on personal rights, in particular personal rights to property, the Committee refers proposed section 22(1B) *Criminal Assets Recovery Act 1990* to Parliament for its consideration.

Issue: Schedule 1, Part 4, Clause 17(3) *Criminal Assets Recovery Act 1990* – Excludes review

37. The Committee refers to Parliament whether Schedule 1, Part 4, Clause 17(3) *Criminal Assets Recovery Act 1990*, which prohibits restraining provisions from being the subject of an application for a review by the Supreme Court on a number of grounds, unduly trespasses on personal rights and liberties.

2. Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009

Issue – Schedule 1 [1] – Rights of Association

18. The Committee notes that Schedule 1 [1] of the Bill may have the effect of excluding close associates of developers from political functions which may not be directly associated with the developers' interests, therefore affecting their rights of association. The Committee believes that this effect must be balanced with the public interest in this case and refers the matter to Parliament.

3. Industrial Relations (Commonwealth Powers) Bill 2009

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

22. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

Part One – Bills

SECTION A: Comment on Bills

1. CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2009

Date Introduced:	24 November 2009
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Police

Purpose and Description

1. The object of the Bill is to amend the *Criminal Assets Recovery Act 1990* (the Criminal Assets Act) and the *Confiscation of Proceeds of Crime Act 1989* (the Proceeds of Crime Act).
2. The Bill makes changes to ex parte proceedings for restraining orders (a temporary freeze on the disposal of suspected criminal assets) under both Acts as a consequence of the invalidity of section 10 of the Criminal Assets Act by the High Court in *International Finance Trust Company Limited v New South Wales Crime Commission* [2009] HCA 49 (12 November 2009).
3. Section 10A, subsections (1), (2) and (3) Criminal Assets Act provide for the application process for a restraining order. While retaining the ex parte provisions, new subsection (4) provides that the Supreme Court may, if it thinks fit, require the NSW Crime Commission (the Commission) to give notice of the application to any person with interest in the application and that such a person is entitled to appear and adduce evidence.
4. Under section 10C, the Court may set aside a restraining order on application by a person with interest in the affected property. Providing the application is made within 28 days of being notified of the restraining order, the applicant may give evidence on the grounds that the Commission failed to satisfy the Court that there were reasonable grounds for the relevant suspicion, or the order was obtained illegally or against good faith.
5. The Bill enables the Commission to apply for, and to be granted, an assets forfeiture order under the Criminal Assets Act without first applying for or obtaining a restraining order. It also continues, by force of the Criminal Assets Act, the effect of restraining orders that are not set aside or discharged by a Court before the proposed Act commences.
6. The Bill also excludes the State and employees of the State, or other persons acting for the State, from liability and claims for compensation and relief in relation to invalid restraining orders or assets forfeiture orders founded on invalid restraining orders under the Criminal Assets Act

Background

7. According to the Agreement in Principle speech, the Bill rectifies anomalies relating to restraining orders based on a recent decision by the High Court of Australia in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission* by amending the *Criminal Assets Recovery Amendment Act 1990* and by amending the *Confiscation of Proceeds of Crime Act 1989*.
8. Currently under the Criminal Assets Act, the Commission may apply to the Supreme Court for an order to prevent persons or entities subject to possible future confiscation orders from disposing of their property before the substantive confiscation matter can be determined.
9. The order, known as a restraining order and is also referred to as a freezing order as it freezes assets. This application is heard *ex parte*, without the respondent to the application present. The Commission may then proceed with the process to investigate and present the case to the court for application for the final forfeiture order, which means the court can order the person's cash and assets to be removed from them.
10. On 12 November the decision in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission and Others* was handed down. The majority of the Court found that section 10 Criminal Assets Act was invalid. The Court found that section 10 Criminal Assets Act “engages the Supreme Court in activity which is repugnant in a fundamental degree to the judicial process as understood and conducted throughout Australia” (Justice Gummow and Justice Bell).
11. The Court objected to the situation that the application could, at the discretion of the Commission and not the Court, be made *ex parte* without notice. As stated by Chief Justice French:

In my opinion the power conferred on the Commission to choose, in effect, whether to require the Supreme Court of New South Wales to hear and determine an application for a restraining order without notice to the party affected is incompatible with the judicial function of that Court. It deprives the Court of the power to determine whether procedural fairness, judged by reference to practical considerations of the kind usually relevant to applications for interlocutory freezing orders, requires that notice be given to the party affected before an order is made. It deprives the Court of an essential incident of the judicial function. In that way, directing the Court as to the manner of the exercise of its jurisdiction, it distorts the institutional integrity of the Court and affects its capacity as a repository of federal jurisdiction.
12. The Court also objected to the requirement for the Supreme Court to make a decision based on the authorised officer's affidavit about their suspicions about the source of the property, without the Court being able to hear from the other side. The High Court made clear the importance of the Supreme Court hearing the application having the ability to exercise its discretion and to consider arguments from both sides concerning the property and the suspicions of criminal activity.
13. Further, the inability of the respondent to be notified of the *ex parte* application or to have a right of review, outside of two limited circumstances, was determined by the majority of the High Court to be unacceptable and the relevant section was declared invalid. The High Court decision related only to restraining orders and not to the power regarding the forfeiture of the assets.

14. As stated in the Agreement in Principle Speech, the amendments are intended to respond to the concerns of the Court about procedural fairness in the context of restraining orders under the Criminal Assets Act. The amendments are intended to give the Court discretion to provide some degree of procedural fairness to interested parties.
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 Criminal Assets Recovery Act 1990 No 23

Changes to restraining order procedures

The Criminal Assets Act currently requires applications for restraining orders, that is, orders restraining persons from disposing or otherwise dealing with or attempting to dispose or otherwise deal with interests in property, to be determined in ex parte proceedings by the Supreme Court, on affidavit evidence provided by the Commission.

Schedule 1 [3] repeals sections 10–10B of the Criminal Assets Act, which relate to proceedings for restraining orders, and re-enacts those provisions as sections 10 10D, with the following modifications and additions:

- (a) the Supreme Court is given a discretion (in proposed section 10A (4)) to require the Commission to give notice of an application for a restraining order to a person who the Court has reason to believe has an interest in the property or part of the property proposed to be subject to the order. Any person who is so notified is entitled to appear and adduce evidence at the hearing of the application. Such evidence may be considered by the Court in determining an application,
- (b) a person affected by a restraining order is given the right to apply to the Supreme Court for an order setting aside a restraining order. The Court may set aside the order on the ground that the Commission has failed to establish that there are reasonable grounds for the suspicion on which the order was based or if the applicant establishes that the order was obtained illegally or not in good faith. An application is generally required to be made within 28 days of notice of the restraining order,
- (c) the procedures for telephone applications for restraining orders have been integrated with the other provisions relating to applications for restraining orders,
- (d) the provisions are re-ordered.

Schedule 1 [1], [7], [8], [10] and [11] make consequential amendments.

Schedule 1 [2] updates a definition of rules of court, so that the expression will apply to rules of the Supreme Court under the *Uniform Civil Procedure Rules 2005*.

Changes to procedures for assets forfeiture orders

Currently, an assets forfeiture order, that is, an order forfeiting to, and vesting in, the Crown, assets in property, can only be made if those assets are subject to a restraining order.

Schedule 1 [5] enables the Supreme Court to make an assets forfeiture order without the requirement for a restraining order to be in force in respect of the relevant interests in property. The interests in property that can be the subject of an assets forfeiture order are the same kinds of interests that can be the subject of a restraining order and the Commission may still apply for a restraining order before or at the same time as it applies for an assets forfeiture order.

Schedule 1 [4] makes a consequential amendment.

Schedule 1 [9] inserts proposed Division 2B of Part 3 (proposed section 31D), as a consequence of the amendment made by **Schedule 1 [5]**. The proposed section enables the Commission to seek an order from the Supreme Court for the examination on oath of a person affected by a confiscation order (that is, an assets forfeiture order or a proceeds assessment order). The proposed section also enables the Commission to obtain an order directing a person to provide a statement about property or dealings with property. The proposed section enables the Commission to obtain orders now available under section 12 of the Criminal Assets Act for the purposes of its confiscation order proceedings (previously the ability to obtain such orders was available for assets forfeiture orders because of the linkage between applications for restraining orders and assets forfeiture proceedings).

Schedule 1 [6] and [12] make consequential amendments.

Savings and transitional provisions relating to invalid restraining orders, current assets forfeiture orders and other matters

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

Schedule 1 [14] inserts proposed Part 4 (proposed clauses 15–24) of Schedule 1. Proposed clause 15 defines words and expressions used in the Part. Proposed clause 16 gives effect, by force of the proposed clause, to the provisions of a restraining order (a former restraining order), and any ancillary orders, purported to be made before 12 November 2009 (the day the High Court declared current section 10 to be invalid) that had not ceased to be in force before that day (a current former restraining order). The proposed clause applies the Criminal Assets Act, and other laws, to these provisions (restraining provisions) as if the provisions were restraining orders and ancillary orders. The proposed clause does not give effect to any order specifically set aside by the High Court decision or to anything in respect of an order set aside after 12 November 2009 for any period after the order was set aside.

Proposed clause 17 enables restraining provisions to be set aside under proposed section 10C but requires any application for such an order to be made within 28 days of the date of assent to the proposed Act. It also prohibits restraining provisions from being the subject of an application for a review by the Supreme Court on the ground that the affidavit on which the original restraining order was based contained inadmissible evidence, on the ground that the judge who determined the application for the original order failed to supply reasons for the determination or because of the invalidity of the previous section 10. The proposed clause also enables the Supreme Court, at any time on the application of the Commission, to set aside restraining provisions.

Proposed clause 18 excludes the State (including the Commission, the NSW Trustee and Guardian and any officer, employee or agent of the Crown) from liability for various matters

arising directly or indirectly from the enactment of the proposed Act and relating to former restraining orders, existing interstate restraining orders and assets forfeiture orders and orders ancillary to those orders made before the commencement of the proposed Act (existing assets forfeiture orders). It also excludes compensation from being payable by or on behalf of the State for any such matters. Proceedings for compensation or other relief for the purpose of restraining any action in relation to an interest in property in accordance with a former restraining order or assets forfeiture order are also prohibited.

Proposed clause 19 provides that the validity of an existing assets forfeiture order is not affected by the fact that there was no valid restraining order in force when the application for the order, or the order, was made and prohibits any challenge to its validity on that ground. Acts or omissions with respect to existing assets forfeiture orders are validated if they would be valid after the commencement of the proposed Act.

Proposed clause 20 continues current applications for assets forfeiture orders and removes any requirement that there be a restraining order before any such application can be granted.

Proposed clause 21 continues existing interstate restraining orders in force as if they were restraining orders made under proposed section 10A and validates acts or omissions with respect to those orders if they would be valid after the commencement of the proposed Act.

Proposed clause 22 prevents a person from being liable for an offence, because of the operation of proposed clause 16, if the act or omission constituting the offence did not constitute an offence when it occurred. This clause will prevent a prosecution for offences such as contravening a restraining order if the restraining order was invalid when the contravention occurred.

Proposed clause 23 removes the requirement for the Commission to cancel recordings relating to property, or withdraw any relevant caveat, because of the invalidity of current former restraining orders.

Proposed clause 24 enables savings and transitional regulations to be made that are inconsistent with the provisions of the proposed Part.

Schedule 2 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90

Changes to restraining order procedures

Schedule 2 [1] makes it clear that the Supreme Court may consider any evidence adduced from an affected party when determining an application for a restraining order. Under section 44 (1) of the Proceeds of Crime Act, the Supreme Court has a discretion, despite the ex parte proceedings, to notify an affected party who may then attend the proceedings and adduce evidence.

Schedule 2 [2] inserts proposed section 44A. The proposed section confirms that the ex parte procedures in the Proceeds of Crime Act for restraining orders do not prevent the Supreme Court from exercising powers, derived from rules of court (that is, the *Uniform Civil Procedure Rules 2005*) and other laws (such as its inherent power to set aside ex parte orders), to set aside or vary restraining orders or ancillary orders.

Savings and transitional provisions

Schedule 2 [3] enables regulations containing provisions of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

Issues Considered by the Committee

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

Issue: Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* - Retrospectivity

16. Schedule 1, Part 4 makes a number of amendments with retrospective application that have the potential to impact on personal rights. Schedule 1, Part 4, Clause 16 *Criminal Assets Recovery Act 1990* gives effect to the provisions of a former restraining order (including an ancillary order) made before 12 November 2009 (the date of the High Court judgment) that had not ceased to be in force before that day, other than because of the invalidity of section 10 (as purported to be in force immediately before that date) on constitutional grounds.
17. However, Clause 16 does not give effect to any order specifically set aside by the High Court in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission* or anything in respect of an order set aside or discharged by a Court after 12 November 2009 and before the date of the Bill's introduction into Parliament for any period after the order was set aside (Clauses 16(5) and 16 (6)).
18. Proposed Clause 16(4) also provides that any thing done or omitted to be done under this Act or any other law in respect of a current former restraining order or any interest in property purported to be subject to a current former restraining order is taken to have been done or omitted in respect of the corresponding restraining provisions or interest in property subject to those provisions.
19. There are also a number of other provisions with retrospective application, for example Schedule 1, Part 4, Clauses 19 and 20 relating to assets forfeiture orders and applications and Clause 22 relating to interstate restraining orders. Further, under Schedule 1, Part 4, Clause 22 a person is not, because of Clause 16, liable to prosecution for any act or omission if the act or omission did not, at the time it occurred, constitute an offence.

20. The Committee has concerns regarding the retrospective application of proposed Schedule 1, Part 4, in particular Clause 16 *Criminal Assets Recovery Act 1990* on personal rights and liberties, in particular the personal right to property. Accordingly, the Committee refers Schedule 1, Part 4 *Criminal Assets Recovery Act 1990* to Parliament for its consideration.

Issue: Schedule 1, Part 4 Clause 18 *Criminal Assets Recovery Act 1990* – Denial of Compensation; Retrospectivity

21. Schedule 1, Part 4, Clause 18 excludes the State (including the Commission, the NSW Trustee and Guardian and any officer, employee or agent of the Crown) from liability for various matters arising directly or indirectly from the enactment of the proposed Act and the determination of the High Court in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission and Others* that section 10 *Criminal Assets Recovery Act 1990* was invalid on constitutional grounds.

22. The exclusion of compensation being payable by or on behalf of the State extends to matters arising from former restraining orders, existing interstate restraining orders and assets forfeiture orders and orders ancillary to those orders made before the commencement of the proposed Act. Compensation includes damages or costs or any other form of compensation (whether or not monetary).
23. Clause 18(3) also provides that no proceedings may be instituted against the State for compensation or other relief, whether arising in law or equity for the purposes of (a) restraining any action in relation to an interest in property in accordance with a former restraining order or existing assets forfeiture order; or (b) obtaining compensation for loss or damage arising directly or indirectly from this matter.
24. Further, Clause 18(4) reads that the Clause 18 applies to or in respect of any act, statement or conduct (including any act or omission, whether unconscionable, misleading, deceptive or otherwise) by or on behalf of the State whether occurring before or after the commencement of the Clause, which therefore has retrospective application.

25. The Committee considers that the right to seek compensation is an important personal right and should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee notes that Schedule 1, Part 4, in particular Clause 18 of the Bill excludes the State from liability for various matters arising from the enactment of the proposed Act. Accordingly, the Committee refers to Parliament for its consideration whether proposed Schedule 1, Part 4, Clause 18 unduly trespasses on personal rights and liberties by removing the right to compensation (including retrospectively removing this personal right).

Issue: Clause 10A(4) *Criminal Assets Recovery Act 1990*; Section 22 *Criminal Assets Recovery Act 1990*; Schedule 1, Part 4, Clauses 19 and 20 *Criminal Assets Recovery Act 1990* – Procedural Fairness

26. Proposed section 10A, subsections (1), (2) and (3) provide for the application process for a restraining order. While retaining the ex parte provisions, the Supreme Court is given a discretion (in section 10A(4)) to require the Commission to give notice of an application for a restraining order to a person who the Court has reason to believe has an interest in the property or part of the property proposed to be subject to the order. Under the amendments in section 10A(4), any person who is so notified is entitled to appear and adduce evidence at the hearing of the application.

27. The Committee notes that section 10A(4) has been introduced to respond to the concerns of the High Court regarding principles of procedural fairness in *International Finance Trust Company Ltd & Anor v New South Wales Crime Commission and Others*. Accordingly, the Committee notes that the proposed amendments in section 10A(4) provide the Supreme Court with a discretion to require the Commission to give notice of an application if it thinks fit and under section 10A(4) such a person is entitled to appear to adduce evidence at the hearing of the application.

28. However, the Committee also notes that under proposed section 22(1B) *Criminal Assets Recovery Act 1990*, an assets forfeiture order may be made whether or not an

application for a restraining order relating to the interests in property that is the subject of the application for the assets forfeiture order has been made or granted. .

29. Under the *Criminal Assets Recovery Act 1990*, the Court must make an assets forfeiture order Court finds it to be more probable than not that the person whose suspected serious crime related activity, or serious crime related activities, formed the basis of the application for the assets forfeiture order was, at any time not more than 6 years before the making of the application, engaged in:
- (a) a serious crime related activity involving an indictable quantity, or
 - (b) a serious crime related activity involving an offence punishable by imprisonment for 5 years or more.
30. "A serious crime related activity" is defined in section 6 of the *Criminal Assets Recovery Act 1990*. Section 6 reads that anything done by the person that was at the time a serious criminal offence, whether or not the person has been charged with the offence or, if charged has been tried; or has been tried and acquitted; or has been convicted (even if the conviction has been quashed or set aside).
31. The Committee also notes that current section 22(3) *Criminal Assets Recovery Act 1990* provides that a finding of the Court for the purposes of subsection 22(2) *Criminal Assets Recovery Act 1990* need not be based on a finding as to the commission of a particular offence or a finding as to any particular quantity involved, and can be based:
- (a) on a finding that some offence or other constituting a serious crime related activity and punishable by imprisonment for 5 years or more was committed, or
 - (b) on a finding that some offence or other constituting a serious crime related activity was committed involving some quantity or other that was an indictable quantity.
32. Further, current section 22(3A) *Criminal Assets Recovery Act 1990* reads that a finding of the Supreme Court for the purposes of subsection 22(2A) *Criminal Assets Recovery Act 1990* need not be based on a particular finding as to the commission of a particular offence and can be based on a finding that some offence or other constituting illegal activity was committed.
33. However, unlike restraining orders, under current section 22(9) *Criminal Assets Recovery Act 1990*, notice is to be given to the person to whom an assets forfeiture order application relates under current section 22(9) and the person may appear, and adduce evidence, at the hearing of the application.
- 34. Although notice is required to be given to a person to whom an application for an assets forfeiture order application under current section 22(9) *Criminal Assets Recovery Act 1990*, the Committee notes that proposed section 22(1B) *Criminal Assets Recovery Act 1990* enables the Commission to apply for, and to be granted, an assets forfeiture order under the *Criminal Assets Recovery Act 1990* without first applying for or obtaining a restraining order. Given the significant impact of an assets forfeiture order on personal rights, in particular personal rights to property, the Committee refers proposed section 22(1B) *Criminal Assets Recovery Act 1990* to Parliament for its consideration.**

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

Issue: Schedule 1, Part 4, Clause 17(3) *Criminal Assets Recovery Act 1990* – Excludes review

35. The Committee notes that Schedule 1, Part 4, Clause 17(1) provides that restraining provisions may be the subject of an application for review under proposed section 10C *Criminal Assets Recovery Act 1990*, no later than 28 days after the commencement of the 2009 Act. Clause 17(2) provides that the application for review under section 10C may also relate to the circumstances of the grant of the current former restraining order concerned (as defined in Clause 16).
36. However, proposed Clause 17(3) specifically excludes a number of matters from being the basis of an application to the Supreme Court to set aside restraining provisions. These exclusions include:
- (a) that the affidavit on which the current former restraining order was based contained evidence that was inadmissible;
 - (b) that the judge who determined the application for the current former restraining order failed to supply reasons for the determination;
 - (c) that the current former restraining order was invalid because of the invalidity of section 10 (as purported to be in force immediately before 12 November 2009) on constitutional grounds.

37. The Committee refers to Parliament whether Schedule 1, Part 4, Clause 17(3) *Criminal Assets Recovery Act 1990*, which prohibits restraining provisions from being the subject of an application for a review by the Supreme Court on a number of grounds, unduly trespasses on personal rights and liberties.

The Committee makes no further comment on this Bill.

2. ELECTION FUNDING AND DISCLOSURES AMENDMENT (PROPERTY DEVELOPERS PROHIBITION) BILL 2009

Date Introduced:	25 November 2009
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Nathan Rees MP
Portfolio:	Premier

Purpose and Description

1. The object of this Bill is to prohibit political donations by property developers. The Bill provides that:
 - it is unlawful for a person to make a political donation if the person is a property developer or makes the donation on behalf of a property developer, and
 - it is unlawful for a person to accept a political donation that was made by or on behalf of a property developer, and
 - it is unlawful for a property developer or a person on behalf of a property developer to solicit another person to make a political donation.
2. The Bill includes close associates of property developers as property developers for the purposes of these restrictions.
3. The Bill includes loans as political donations (other than loans from financial institutions).

Background

4. According to the Agreement in Principle Speech the Bill forms the first step in reforms to remove a culture of donations from this State's political landscape. The Bill will amend the *Election Funding and Disclosures Act 1981* to prohibit political donations made by or on behalf of property developers. In particular, the Bill will make it unlawful for a property developer to make a political donation. It will make it unlawful for a person to make a political donation on behalf of a property developer. In order to minimise opportunities for avoidance, the Bill makes it unlawful for a property developer to solicit another person to make that political donation. It will also make it unlawful for a person to knowingly accept a political donation made by a property developer, or made by a person on behalf of a property developer.
5. Any political party that breaches the new rules will be subject to a maximum penalty of \$22,000. In the case of any other person, the penalty will be \$11,000. These penalties apply in addition to the power of the Election Funding Authority to recoup unlawful donations. As determining exactly who is a property developer for the purposes of a ban on donations is a difficult exercise, the Bill contains a detailed definition of

"property developer" to ensure certainty and to minimise loopholes in relation to corporate donations.

6. Officers and directors of a corporation that is a property developer are covered, but not regular employees. The definitions in the Bill have been designed to not encroach on an individual's right to freedom of political communication, but still ensure the ban is meaningful and reasonably adapted to address the public's concern about corporate donations from property developers.
7. The Bill clarifies that corporations such as supermarkets and other retail businesses that make planning applications from time to time in relation to properties from which they conduct their usual business, such as selling groceries, are not covered by the ban. The ban on donations does not apply to home owners or individuals renovating investment properties.

The Bill

8. 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 Election Funding and Disclosures Act 1981 No 78

Prohibition of property developer donations

Schedule 1 [1] inserts Division 4A into Part 6 of the *Election Funding and Disclosures Act 1981* (the **principal Act**) which prohibits property developer donations.

Proposed Division 4A provides that:

- (a) it is unlawful for a property developer or a person on behalf of a property developer to make a political donation, and
- (b) it is unlawful for a person to accept a political donation that was made (wholly or partly) by a property developer or on behalf of a property developer, and
- (c) it is unlawful for a property developer or a person on behalf of a property developer to solicit another person to make a political donation.

Meaning of "property developer"

The Bill defines a **property developer** to be:

- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, or
- (b) close associates of such a corporation.

Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer.

A **close associate** of a corporation includes:

- (a) directors and officers of the corporation and their spouses, and
- (b) a related body corporate of the corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth), and
- (c) persons whose voting power in the corporation or a related body corporate is greater than 20% and their spouses.

A **relevant planning application** has the same meaning as in section 147 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**) and includes:

- (a) a formal request to the Minister for Planning (the Minister), a council or the Director-General of the Department of Planning (the Director-General) to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, and
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or declared a project to which Part 3A of the EP&A Act applies, and
- (c) an application for approval of a concept plan or project under Part 3A of the EP&A Act, and
- (d) an application for development consent under Part 4 of the EP&A Act.

Offences and recovery of unlawful donations

Schedule 1 [2] makes it an offence for a person to do any of the acts set out above if the person knows that the act is unlawful. The maximum penalty will be the same as for other offences relating to political donations, that is, 200 penalty units for a party (currently, \$22,000) and 100 penalty units in any other case (currently, \$11,000). As is the case for other political donations that are unlawful under the principal Act, the Election Funding Authority of New South Wales (the Authority) may recover the amount of any political donation that is unlawful under proposed Division 4A from the person who made the donation as a debt due to the State.

Inclusion of loans as political donations

Proposed Division 4A provides that a loan is to be regarded as a political donation if it would as a gift be a political donation. Loans from financial institutions are not included as political donations.

Exceptions for membership contributions

Proposed Division 4A includes an exception for membership contributions that would otherwise be considered political donations under the principal Act. An annual or other subscription paid to a party by an individual for membership of the party or for the individual's affiliation with the party will not be a political donation for the purposes of proposed Division 4A unless it is a reportable political donation. Under the principal Act, a reportable political donation means a political donation of \$1,000 or more.

Determination by Authority that person is not a property developer

Under proposed Division 4A, a person may apply to the Authority for a determination by the Authority that the person (or another person) is not a property developer for the purposes of the Division. The Authority is to make its determination solely on the basis of information provided by the applicant and may make such a determination if it is satisfied that it is more

likely than not that the person is not a property developer. The Authority is to maintain a public register of any determinations and the register is to be published on the Authority's website. A determination by the Authority is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect). The presumption does not apply in favour of a person who knew that information provided to the Authority in connection with the making of the determination was false or misleading in a material particular.

Issues Considered by the Committee

Trespasses on Personal Rights and Liberties [s 8A(1)(b)(i) *LRA*]

Issue – Schedule 1 [1] – Rights of Association

9. On 27 November 2009 the Committee received correspondence from Urban Taskforce Australia arguing that the definitions of “close associates” and “electoral expenditure” under the bill were too wide and, as such, the ban prevents “close associates of property developers financially supporting issue-based campaigns highlighting their concerns to voters.
10. The Taskforce also argues that the definition of “political donation” will include an entry fee for a function held by a political party. The Taskforce argues that is very common for developers and their spouses to be members of political parties and this effects their rights to attend such functions.
11. The Taskforce also argues that the Bill is sexually discriminatory as individuals are caught under the Bill due to their marital status.
12. The Committee has considered these issues but does not consider that this is the intent, or effect, of the legislation. While the Bill excludes individuals who are undertaking, or who have undertaken, a property development, it is accepted that individuals, due to their close connection to property developers, may have some rights affected. It is noted that these people usually also financially benefit from their association with property developers through their combined marital income or wages.
13. The Committee considers that it is in the public interest to curb political donations from developers and accepts that the Bill would not be effective if close associates such as spouses and employees of property developers were not also excluded under the legislation. It also accepts that the definition of “electoral expenditure” must be wide to be effective.
14. While the Committee does not recognise the right for property developers or their spouses or employees to provide political donations as a basic right under human rights law it does recognise rights of association by individuals.
15. Section 85 (2) of the “Election Funding and Disclosures Act 1981” includes in the definition of a “political donation” “an amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function) is taken to be a gift for the purposes of this section.”

16. The Committee accepts that the Bill may therefore have the effect of excluding close associates of developers from political functions which may not be directly associated with the developers' interests.
17. The Committee notes that under proposed Division 4A, a person may apply to the Authority for a determination by the Authority that the person (or another person) is not a property developer for the purposes of the Division. The Authority is to make its determination solely on the basis of information provided by the applicant and may make such a determination if it is satisfied that it is more likely than not that the person is not a property developer.
18. **The Committee notes that Schedule 1 [1] of the Bill may have the effect of excluding close associates of developers from political functions which may not be directly associated with the developers' interests, therefore affecting their rights of association. The Committee believes that this effect must be balanced with the public interest in this case and refers the matter to Parliament.**

The Committee makes no further comment on this Bill.

3. INDUSTRIAL RELATIONS (COMMONWEALTH POWERS) BILL 2009

Date Introduced: 25 November 2009
House Introduced: Legislative Assembly
Minister Responsible: Hon John Hatzistergos MLC
Portfolio: Attorney General, Industrial Relations

Purpose and Description

1. This Bill refers certain matters relating to workplace relations to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the *Constitution of the Commonwealth*; and to amend the *Industrial Relations Act 1996*.
2. The Bill's primary purpose is to refer to the Commonwealth sufficient power to enable the creation of a national industrial relations system for the private sector.
3. It removes the need to apply the constitutional test as to whether an employer was part of an interstate industrial dispute. This referral will aim to remove uncertainty about the status of employers, and ensure that the same industrial relations framework covers all employers and employees in the private sector. It will bring unincorporated businesses and charities into the system. From 1 January 2010, it will cover all private sector organisations in Queensland, Victoria, Tasmania, South Australia and the two Territories.
4. On the commencement of its provisions, New South Wales will also join the national industrial relations system. By exclusion, this referral will not apply to the New South Wales public service or the New South Wales local government sector.
5. The Bill aims to clarify the interaction between the Commonwealth's *Fair Work Act 2009* and State laws that deal with public holidays, business trading hours, essential services and victims of crime leave.
6. The introduction of the Commonwealth's *Fair Work Amendment (State Referrals and Other Measures) Bill* aims to achieve the interaction between the Commonwealth law and State laws. That Bill shows how referrals by the States will be accepted by the Commonwealth to establish a cooperative national system. The Commonwealth Bill establishes how the transition to the new system will operate for the private sector employers and their employees who are the subject of this referral.
7. The major provisions of this Bill concern the operation of this referral of power. The major features are: the creation of fundamental workplace relations principles in clause 4; the creation of an initial reference of powers, a referral of the power to amend the referred laws and a referral of power to make transitional laws about the referred matters; the exclusion of a specified range of matters in clause 6; and the process for the termination of the reference in clauses 7 to 9. Schedule 1 sets out the text that is required to be inserted in the Commonwealth's *Fair Work Act 2009* in order to effect the referral of powers.

8. The other major provisions relate to consequential amendments. Schedule 2 sets out the amendments to New South Wales law considered necessary to align State law with the national industrial relations system. Schedule 2 repeals section 146A of the *Industrial Relations Act 1996* and also amends section 146B of the *Industrial Relations Act 1996*. In the repeal of section 146A, the commencement of the *Fair Work Act 2009* overrides the operation of these laws. Therefore, that section becomes redundant.
9. The amendment to section 146B of the *Industrial Relations Act 1996* will permit members of the Industrial Relations Commission of New South Wales to be nominated as dispute resolution providers in federal enterprise agreements. This aims to ensure that companies who use the Industrial Relations Commission will be able to continue these arrangements. The implementation period will be in 2010, with the transitional period through to 2015.

Background

10. In July 2009, the Commonwealth *Fair Work Act 2009* commenced. The national industrial relations system will be based on the Commonwealth *Fair Work Act 2009*, which did away with the previous WorkChoices laws. This Bill will extend the coverage of the *Fair Work Act* to all private sector employees and employers in New South Wales. Employers who are sole traders, partnerships or non-trading corporations are currently covered by the New South Wales industrial relations system, and will be referred to the national system.
11. In 2006, the Commonwealth WorkChoices laws redrew the basis on what was covered by Federal industrial laws. The corporations power of the Constitution was used to extend the application of Federal laws and to override the limitations on the conciliation and arbitration power that had traditionally been the basis for Federal industrial laws. However, this left uncertainty for some organisations, particularly in the charitable sector, not knowing what laws they were covered by.
12. This Bill will also do the following. Firstly, employers and employees affected by this referral will, mostly, retain their State award entitlements for at least one year. There are exceptions such as: all employees will be entitled to the benefit of the new National Employment Standards, and Fair Work Australia will be able to periodically adjust these conditions. Secondly, Fair Work Australia will manage the transition to modern awards over a full five-year period to 2015. This gives employers and employees a reasonable period to adjust. Thirdly, take-home-pay orders will be able to be made by Fair Work Australia to ensure that no existing employees will suffer a reduction in net pay.
13. The national fair work system includes an enforceable safety net of minimum employment standards; rights to ensure fairness, choice and representation at work; collective bargaining at the enterprise level with no provision for individual statutory agreements; protection from unfair dismissal; ongoing commitment to an independent tribunal system; and an independent authority to assist employers and employees within the national system. These principles are mirrored in the Commonwealth's *Fair Work Amendment (State Referrals and Other Measures) Bill* and are established in the referring legislation of each of the other participating States. They are also provided in the multilateral intergovernmental agreement that all States participating in the national system will sign or have signed.

14. The multilateral intergovernmental agreement commits all participating jurisdictions to support the fundamental industrial relations principles. If the Commonwealth Government seeks to amend the *Fair Work Act* that would undermine the fundamental workplace relations principles, that amendment will be debated at the Workplace Relations Ministerial Council. If a two-thirds majority does not support the amendment, the Commonwealth has committed to not proceed with it.

15. According to the Agreement in Principle speech:

If the New South Wales Government is of the view that an amendment or proposed amendment to Commonwealth legislation undermines the fundamental principles, a proclamation may be made declaring that that particular amendment will have no effect in the State of New South Wales. But this partial termination of the reference of powers will not affect the overall reference; that is, the rest of the national system as it operates in this State will not be affected by such a proclamation. This mechanism permits the State to precisely identify and quarantine any objectionable amendments to the Fair Work Act. This promotes the stability of the system whilst also providing the Government with the capacity to target WorkChoices-style laws...The Commonwealth has agreed that seven members of the New South Wales Industrial Relations Commission will be appointed to positions in Fair Work Australia, the tribunal that administers the Fair Work Act. Three of these members will work in Fair Work Australia on a full-time basis, four on a part-time basis. All will maintain their membership of the Industrial Relations Commission.

16. There will be establishments of Fair Work Australia in the industrial centres of Newcastle and Wollongong where Fair Work Australia will share premises with the Industrial Relations Commission.

17. The Agreement in Principle stated that:

There will also be considerable cooperation between the Commonwealth and New South Wales in the provision of education and compliance services. Inspectors from New South Wales Industrial Relations and the Fair Work Ombudsman will work together to deliver information and educational services to the workplaces of New South Wales. State inspectors will be trained and dual-badged as inspectors under the Commonwealth's *Fair Work Act 2009*...the program will particularly focus on unincorporated employers who are the subject of this bill. In this program employers from regional areas of New South Wales will be key targets.

18. The New South Wales Government will also form an Industrial Relations Advisory Committee to provide independent advice to the Government.

The Bill

19. The object of this Bill is to refer certain matters relating to workplace relations to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament. The Bill operates by reference to certain text of the *Fair Work Act 2009* of the Commonwealth (the Commonwealth Fair Work Act) that will apply that Act (and future amendments to that Act) to all employees other than State public sector and local government sector employees. The Bill also makes consequential amendments to the *Industrial Relations Act 1996*.

20. 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 to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. The clause defines the subject matters of workplace relations to be referred and the matters excluded from those referred matters. The clause also defines the scope of employment within the State and local government sectors for the purposes of the exclusion of those employees from the referral.

Clause 4 sets out fundamental workplace relations principles under the proposed Act.

Clause 5 deals with the references to the Commonwealth Parliament. The references comprise the initial reference of the text set out in Schedule 1 (to cover the application of the Commonwealth legislation in the State), the amendment reference (to cover future amendment of the Commonwealth legislation) and the transition reference (to enable the transition from State to Commonwealth industrial relations arrangements).

Clause 6 deals with matters excluded from the reference, namely State and local government employees (including Ministers and Members of Parliament, parliamentary staff, and law enforcement officers).

Clause 7 deals with the termination of the period of the references under clause 5 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the period of initial, amendment and transition references to be terminated or only the period of the amendment or transition reference to be terminated.

Clause 8 makes it clear that the separate termination of the period of the amendment or transition reference does not affect laws already in place. Accordingly, the transition or amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 9 requires 6 months' notice of the proposed termination of a reference. However, only 3 months' notice of the proposed termination of the amendment reference is required if future Commonwealth legislation is considered to be inconsistent with any of the fundamental workplace relations principles set out in clause 4.

Schedule 1 Text to be included in the provisions of the Commonwealth Fair Work Act

Schedule 1 sets out the relevant text of the Commonwealth Fair Work Act that will apply that Act to employment generally in the State (other than for the State public and local government sectors).

Schedule 2 Amendment of *Industrial Relations Act 1996 No 17*

Schedule 2 amends the *Industrial Relations Act 1996* for the following purposes:

- (a) to provide a mechanism (authorised under the Commonwealth Fair Work Act) by which the Minister may declare specified State or local government employers (including certain subsidiary or related bodies) not to be national system employers

- and thereby excluded from that Act (provided the declaration is confirmed by the relevant Commonwealth Minister);
- (b) to recognise the referral of power and to make transitional provision relating to the updating of existing references in NSW Acts and instruments to State industrial instruments or agreements;
 - (c) to repeal section 146A, which authorised the Industrial Relations Commission of New South Wales to deal with industrial matters by agreement with corporations subject to the previous federal workchoices legislation;
 - (d) to revise provisions that refer to the federal legislation to reflect changes made by the Commonwealth Fair Work Act;
 - (e) to enable savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Issues Considered by the Committee

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.

21. The Committee notes that the proposed Act is to commence on a day to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. However, the Committee accepts the advice received from the Attorney General's office that: "The proposed Act will commence on proclamation rather than assent because the bill is dependent upon the passage of a bill currently before the Commonwealth Parliament - the *Fair Work (State Referrals and Other Measures) Bill*. Further, it is the policy of the government that the enactment of the legislation is dependant upon a multilateral intergovernmental agreement; the appointment of 7 members of the Industrial Relations Commission to Fair Work Australia; and the provision of \$16 million in funding from the Commonwealth".

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| <p>22. The Committee accepts the advice received above and has not identified any issues identified under s 8A(1)(b)(iv) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

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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				
Child Protection (Nicole's Law) Bill 2009*	R, N				
Child Protection Legislation (Registrable Persons) Amendment Bill 2009	N			N	
Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009	N			N	
Commission for Children and Young People Amendment Bill 2009	R			R, N	R
Constitution Amendment (Lieutenant-Governor) Bill 2009	N				
Courts and Crimes Legislation Amendment Bill 2009	R, N			N	
Courts and Other Legislation Amendment Bill 2009	R, N			N	
Crimes Amendment (Fraud, Identity And Forgery Offences) Bill 2009				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				
Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009*		R, N			
Criminal Assets Recovery Amendment Bill 2009	R, N		N		

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Criminal Legislation Amendment Bill 2009		N			
Criminal Organisations Legislation	R, N			N	
Criminal Procedure Amendment (Case Management) Bill 2009	N			N	
Crown Lands Amendment (Special Purpose Leases) Bill 2009		N, R			
Education Amendment (School Attendance) Bill 2009	R, N			N	
Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009	N				
Electricity Supply Amendment (GGAS) Bill 2009	N, R				
Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009	R, N				
Electricity Supply Amendment (Solar Bonus Scheme) Bill 2009				N	
Emergency Services Legislation Amendment (Finance) Bill 2009	N				
Fisheries Management Amendment Bill 2009	R, N			N	
Food Amendment (Food Safety Supervisors) Bill 2009				N	
Game and Feral Animal Control Amendment Bill 2009	R, N				
Gas Supply Amendment (Ombudsman Scheme) Bill 2009				N	
Graffiti Control Amendment Bill 2009	N, R		N, R	N	
Greyhound Racing Bill 2009				N	
Harness Racing Bill 2009				N	
Hawkesbury-Nepean River Bill 2009				N	
Health Legislation Amendment Bill 2009	N				
Heritage Amendment Bill 2009	N			N, R	
Historic Houses Amendment (Throsby Park Historic Site) Bill 2009				N	
Home Building Amendment (Insurance) Bill 2009	N				
Housing Amendment (Registrable Persons) Bill 2009	N, R		R		

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009	N, R				
Industrial Relations (Commonwealth Powers) Bill 2009				N	
Industrial Relations Further 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
Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009	N, R			N	
Passenger Transport Amendment (Taxi Licensing) Bill 2009	N				
Personal Property Securities (Commonwealth Powers) Amendment Bill 2009	N, R			N	
Public Sector Restructure (Miscellaneous Acts Amendments) Bill 2009				N, R	
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	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Road Transport Legislation Amendment (Miscellaneous Provisions) Bill 2009	N, R			N	
Road Transport (Vehicle Registration) Amendment (Heavy Vehicle Registration Charges) Bill 2009				N	
Real Property and Conveyancing Legislation Amendment Bill 2009	N, R				
Rural Fires Amendment Bill 2009	N	N		N	
Save the Graythwaite Estate Bill 2009*	N, R				
Succession Amendment (Intestacy) Bill 2009	N			N	
Surveillance Devices Amendment (Validation) Bill 2009	N, R				
Trade Measurement (Repeal) Bill 2009				N	
Trustee Companies Amendment Bill 2009				N	
Valuation of Land Amendment Bill 2009	N				
Water Management Amendment Bill 2009	N, R			N	
Western Lands Amendment Bill 2008				R	

Key

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

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	
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09			16
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	