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Legislation Review Committee

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No 5 of 2005

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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 iii).

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 iii).

Regulations for the special attention of Parliament

When required, this section contains any reports on regulations subject to disallowance to which the Committee wishes to draw the special attention of Parliament.

Regulations about which the Committee is seeking further information

This table lists the Regulations about which the Committee is seeking further information from the Minister responsible for the instrument, when that request was made and when any reply was received.

Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought information. The Committee's letter to the Minister is published together with the Minister's reply.

Appendix 1: Index of Bills Reported on in 2005

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

This table lists the recipient and date on which the Committee sent correspondence to a Minister or Private Member of Parliament in relation to Bills reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Bill and correspondence appear.

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

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

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

This table lists the recipient and date on which the Committee sent correspondence to a Minister in relation to Regulations reported on in the calendar year. The table also lists the date a reply was received and the *Digests* in which reports on the Regulation and correspondence appear.

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Civil Procedure Bill 2005

Retrospectivity: Schedule 6

16. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.

17. To change the rules for proceedings already on foot may frustrate the legitimate expectation of those involved that the rules would remain consistent throughout the course of those proceedings.

18. However, given the apparent advantage of having the rules apply to all relevant proceedings and the courts' power to dispense with the new rules where appropriate, the Committee does not consider that applying the new rules to proceedings already commenced trespasses unduly on personal rights and liberties.

Henry VIII clause: Clause 4

32. The Committee will always be concerned when rules or regulations may amend Acts, thereby limiting Parliamentary scrutiny.

33. However, having regard to the nature of the provisions subject to such amendment, the purpose of facilitating transitional arrangements, and the fact that any such amendment will be subject to disallowance by Parliament, the Committee considers that proposed cl 4 does not inappropriately delegate legislative power.

2. Coal Acquisition Amendment (Fair Compensation) Bill 2005

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

3. Energy Administration Amendment (Water & Energy Savings) Bill 2005

Commencement by proclamation: Clause 2

14. The Minister's office has advised that the ensuing Act will commence on proclamation to enable the establishment of the Water and Energy Savings Funds and other administrative arrangements to be in place.

Prescription of "State water agencies": proposed new definition (s 3)

18. The Committee notes that enabling the Government to prescribe a State agency as a State water agency by regulation, and thereby subjecting that agency to requirements to make annual contributions, is a significant delegation of legislative power.

19.	However, given that any such regulation would be subject to disallowance by either House of Parliament, the Committee does not consider that this comprises an inappropriate delegation of legislative power.

No default maximum of compulsory contributions: Proposed s 34P

22.	The Committee considers that it is appropriate to vary any maximum compulsory contribution level by regulation as any such variation would be disallowable by Parliament. However, the lack of a default maximum level that applies if no maximum level is prescribed by regulation delegates to the Government the power to determine whether or not there should be a maximum at all.
23.	The Committee refers to Parliament the question as to whether not providing a default maximum level of compulsory contributions payable into the Energy Saving Fund if the Government has not set a maximum level by regulation comprises an inappropriate delegation of legislative power.

4. Game and Feral Animal Control Amendment Bill 2005

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

SECTION B: Ministerial Correspondence — Bills Previously Considered

5. Civil Liability Amendment (Offender Damages) Bill 2005

6.	The Committee thanks the Minister for his response.

6. Electricity Supply Amendment Bill 2005

3.	The Committee thanks the Minister for his response.

7. Legal Profession Bill 2004

6.	The Committee thanks the Attorney General for his response.
7.	The Committee welcomes the Attorney General's referral to the National Legal Profession Joint Working Group of the proposal that legislation in all jurisdictions include a requirement that a person be informed of their right to object to questioning and the nature, extent and consequences of that right to object.
8.	The Committee has written to the Attorney General to request that it be advised of the outcome of the Working Group's consideration of this issue.

8. Prisoners (Interstate Transfer) Amendment Bill 2005

4.	The Committee thanks the Minister for his reply.

9. Road Transport (General) Amendment (Licence Suspension) Bill 2004

11.	The Committee thanks the Minister for his further response.

Part One – Bills

SECTION A: COMMENT ON BILLS

1. CIVIL PROCEDURE BILL 2005

Date Introduced:	6 April 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Purpose and Description

1. The Bill is to consolidate as much as possible of the law relating to civil procedure, particularly insofar as it affects proceedings in the Supreme Court, the District Court and the Local Courts (the courts in which the majority of civil proceedings are heard).

2. It achieves this in part by creating a new set of Uniform Civil Procedure Rules (UCPR).[1]

Background

3. The Attorney General set out the Bill's genesis in the second reading speech:

> The Civil Procedure Bill represents an important advance in how civil litigation is conducted in this State. For the first time, one set of rules will govern the general run of civil proceedings in the Supreme Court, District Court, Local Court and Dust Diseases Tribunal. The bill will streamline and simplify procedures and remove unnecessary differences between the courts. It will lead to time and costs savings for the courts, the legal profession and the public. The bill will also create a platform upon which courts will, in the future, be able to avail themselves of new technologies such as electronic lodgment of documents by clients and more efficient court management practices…
>
> A working party was established in early 2003…The working party's aim was to consolidate provisions about civil proceedings into a single bill and develop a common set of rules, simplified where possible but without radical changes in substance or form…Key stakeholders have been consulted during preparation of the bill and rules. An exposure draft bill was also released earlier this year. The working party has considered these comments and made necessary changes to the bill and rules.[2]

4. The Bill's Explanatory Note states as follows:

> Civil procedure (that is, the rules according to which civil proceedings are commenced and carried on) is currently governed by a number of Acts and instruments, including not only the Acts by which various courts are established (and the rules of practice

[1] The Rules form Sch 7 to the Bill. Terms that are defined in the Bill have the same meaning when used in the UCPR. The Dictionary contains a note, which lists terms that have been defined in the Bill.

[2] The Hon R J Debus MP, Attorney General, *Legislative Assembly Hansard*, 6 April 2005.

> and procedure made under them) but also other Acts and instruments that deal with particular aspects of civil procedure. Different regimes exist for different courts and different subject-matters, the differences frequently being merely an accident of history. Such differences make it difficult for litigants to take advantage of modern computer technology in relation to the creation, filing and service of court process, and make it difficult for courts to take advantage of such technology in relation to case management.

The Bill

5. The Bill applies to civil proceedings, defined as "any proceedings other than criminal proceedings". *Criminal proceedings* are in turn defined to mean any proceedings against a person for an offence (whether summary or indictable), including:

   (a) committal proceedings;

   (b) proceedings relating to bail;

   (c) proceedings relating to sentence; or

   (d) proceedings on an appeal against conviction or sentence.

6. The Bill notes that:

   > [t]he overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the just, quick and cheap resolution of the real issues in the proceedings [proposed s 56].[3]

7. The Bill's aim is to provide a common set of rules, simplified where possible, but without radical changes in substance or in form.[4] To this end:

   - changes of substance have generally not been made;
   - there has been some modernisation of language and drafting style, but to the intent that existing bodies of interpretative or procedural law not be disturbed;
   - it has been attempted to guard against unnecessary sophistication in simple proceedings: small claims up to $10,000 in Local Courts are left to simplified special rules as at present; and
   - the order of the *Supreme Court Rules 1970* (SCR) and the *District Court Rules 1973* (DCR) has essentially been maintained, working through a proceeding from beginning to end. This has been done to keep the rules both logical and familiar to users.

8. The key organisational changes are to:

   - embody the overriding purpose rule and general provisions on case management in the Bill to mark their importance and, similarly, to promote directions and case management rules to an early position in the UCPR. This

[3] Thus, when making orders, the court must act in accordance with the dictates of justice: cl 58 of the *Civil Procedure Bill 2005*.

[4] The Bill provides for a simplified set of common forms for use in all three Courts, so that practitioners will have to keep only one set of forms in their computers and fill in blanks according to which Court the proceedings are in. The forms are designed for use in the CourtLink system, which is in the course of introduction.

will highlight the importance of the overriding requirement of just, quick and cheap disposal of proceedings.

- draw to the beginning of the UCPR preliminary matters relating to preparation and filing of documents, representation and parties.

9. The Bill provides for the establishment of a Uniform Rules Committee, which is able to amend the UCPR and make rules. This Committee will consist of:

- the Chief Justice of the Supreme Court (or his or her nominee);
- the President of the Court of Appeal (or his or her nominee);
- two Judges of the Supreme Court;
- the Chief Judge of the District Court;
- one other Judge of the District Court;
- the Chief Magistrate;
- one other Magistrate;
- a practising barrister; and
- a practising solicitor [proposed s 8].

Changes and continuities

10. Changes of substance include:

- the concepts of *close of pleadings* and *setting down for trial* have been abolished as redundant under the modern regime of case management;
- the time during which originating process remains good for service (without extension by the Court) is to be six months (instead of 12 months) in the Supreme Court and the Local Court; in the District Court, it will be one month where all defendants are to be served in NSW, and six months in other cases.

11. The Bill's continuities include:

- in all three courts there are to be two forms only of originating process, ie, statement of claim and summons, as at present in the Supreme Court; even appeals to a Court in its civil jurisdiction (except for the Court of Appeal) are to be commenced by summons;
- the rules as to pleadings, discovery and interrogatories are to be maintained;
- the new harmonised rules as to subpoenas being adopted widely across Australia (which have been adopted by the Federal Court and the Supreme Court of NSW) are to be adopted; and
- the distinction between the giving and entry of judgment has been maintained, but the method of entry of judgments and orders has been simplified.

12. The Bill contains provisions with respect to:

- commencing and carrying on proceedings generally [Part 3];

- mediation and arbitration [Parts 4 and 5];
- case management and interlocutory matters [Part 6];
- judgments and orders [Part 7];
- enforcement of judgments and orders [Part 8]; and
- transfers of proceedings between courts [Part 9].

13. It also contains provisions relating to:

- administrative matters [Part 2 and Sch 1, 2 & 3];
- repeals, amendments and savings and transitional provisions [Sch 4, 5 & 6]; and
- uniform civil procedure rules to replace the core provisions of the SCR, the DCR and the *Local Courts (Civil Claims) Rules 1988* [Sch 7].

14. The Bill also takes the opportunity to clarify situations where courts have had cause to consider individual rules of court, and case management generally.[5]

Issues Considered by the Committee

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

Retrospectivity: Schedule 6

15. The Bill provides that the ensuing Act applies to pending proceedings in the following manner:

(1) Subject to subclause (2), this Act and the uniform rules apply to proceedings commenced before the commencement of this Act in the same way as they apply to proceedings commenced on or after that commencement.

(2) A court before which proceedings have been commenced before the commencement of this Act may make such orders dispensing with the requirements of the uniform rules in relation to the proceedings, and such consequential orders (including orders as to costs), as are appropriate in the circumstances [proposed Sch 6[5]].

16. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.

17. To change the rules for proceedings already on foot may frustrate the legitimate expectation of those involved that the rules would remain consistent throughout the course of those proceedings.

18. However, given the apparent advantage of having the rules apply to all relevant proceedings and the courts' power to dispense with the new rules where appropriate, the Committee does not consider that applying the new rules to proceedings already commenced trespasses unduly on personal rights and liberties.

[5] See, eg *Air Link v Paterson (No 2)* [2003] NSWCA 251, and *State of Queensland v JL Holdings* (1997) 189 CLR 146.

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

Commencement by proclamation: Clause 2

19. Clause [2] of the Bill provides that the ensuing Act will commence on proclamation.

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

21. The Attorney General noted in the second reading speech that:

> it is expected that the provisions relating to the establishment of the Uniform Rules Committee will commence in June this year. This will enable the Uniform Rules Committee to approve the new civil forms and to deal with any amendments that need to be made to the rules prior to the commencement of the main provisions in the bill and rules. The main provisions are then expected to commence in July, subject to completion of related tasks, including the preparation of the Civil Procedure Regulation, the preparation of amendments to existing court rules to delete rules that are moved into the uniform rules, revision of the practice notes and staff training.[6]

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

Henry VIII clause: Clause 4

22. Clause 4 and Sch 1 to the Bill provide for the application of Parts 3–9 of the proposed Act to different courts and different classes of civil proceedings.

23. Clause 4 also provides that the uniform rules may *exclude* any class of civil proceedings from the operation of all or any of the provisions of Parts 3–9 and for regulations to amend or substitute Sch 1 or make consequential provisions limiting or modifying the application of Parts 3–9 to any class of civil proceedings.

24. Clause 4 thus enables delegated legislation to amend the empowering statute in its application to any class of civil proceedings. Such provisions are commonly referred to as "Henry VIII clauses".

25. The Senate Scrutiny of Bills Committee has observed that:

> [s]ince its establishment, the Committee has consistently drawn attention to Henry VIII clauses. While [an] explanation put forward ... may provide a justification for including these particular provisions, the Committee nevertheless remains concerned whenever subordinate legislation takes precedence over the primary legislation which creates it.[7]

26. The Legislation Review Committee has previously acknowledged that there are limited circumstances where the use of such provisions is appropriate.[8] These situations include:

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[6] The Hon R J Debus MP, Attorney General, *Legislative Assembly Hansard*, 6 April 2005.
[7] Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No.3 of 2000, pp. 10-11.
[8] See *Legislation Review Digest* No.3, 14 October 2003, p.23.

- facilitating the effective application of innovative legislation;
- facilitating transitional arrangements;
- facilitating the application of national schemes of legislation; and
- when circumstances warrant immediate Executive action.

27. Schedule 1 lists the courts and civil proceedings to which Parts 3–9 of the proposed Act are to apply. These are:

- all civil proceedings in the Supreme Court;
- all civil proceedings in the District Court;
- all civil proceedings in the Dust Diseases Tribunal; and
- all civil proceedings before the Local Court under proposed Part 7 of the *Local Courts Act 1982*.

28. Some specialist rules, such as the probate rules and rules relating to appeals to the Court of Appeal, have not been moved from the existing court rules to the UCPR.

29. It was noted in the second reading speech that as proposed s 4 allows the Bill and rules to be applied to other courts and tribunals exercising civil jurisdiction in the future, work will commence on moving many of the specialist rules into the uniform rules after the commencement of the initial set of rules.[9]

30. Accordingly, the ability of regulations to amend or substitute the provisions of Sch 1 facilitate transitional arrangements, as they allow for further incorporation of court rules into the structure of the UCPR.

31. Moreover, Parliamentary oversight of this important rule-making process is maintained by such changes being subject to disallowance by Parliament.

32. The Committee will always be concerned when rules or regulations may amend Acts, thereby limiting Parliamentary scrutiny.

33. However, having regard to the nature of the provisions subject to such amendment, the purpose of facilitating transitional arrangements, and the fact that any such amendment will be subject to disallowance by Parliament, the Committee considers that proposed cl 4 does not inappropriately delegate legislative power.

The Committee makes no further comment on this Bill.

[9] The Hon R J Debus MP, *Legislative Assembly Hansard*, 6 April 2005. Other specialist rules, such as the Corporations Rules and the Admiralty Rules, will not be moved into the uniform rules because they are harmonised nationally.

2. COAL ACQUISITION AMENDMENT (FAIR COMPENSATION) BILL 2005

Date Introduced:	6 April 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kerry Hickey MP
Portfolio:	Mineral Resources

Purpose and Description

1. The Bill amends the *Coal Acquisition Act 1981* (the Act) to make further provision for the payment of compensation under that Act.

2. Principally, it aims to ensure that if royalty is included in the determination of compensation for any claim that has not been finally determined under the Act, the royalty will be calculated on the same basis on which other claims have previously been determined, rather than in accordance with the new scheme for the payment of royalty introduced in 1994 by amendments to the *Mining Act 1992* (the Mining Act).

Background

3. In 1982, the Act vested all coal in the Crown. The *Coal Acquisition (Compensation) Arrangements Bill 1985* instituted a compensation scheme for the consequent loss of coal rights. Under the scheme, the Coal Compensation Board (the Board) determines and pays compensation to former private owners of coal.

4. In the second reading speech, the Minister stated that:

> [p]ayment of compensation pursuant to the *Coal Acquisition (Compensation) Arrangements 1985* is known as the "Compensation Scheme", which has four claims for loss of estate in coal remaining of a total of almost 28,000.[10]

5. The *Coal Ownership (Restitution) Act 1990* (the 1990 Act) provided that certain successful claimants could apply to have the coal restored to them, rather than accept the compensation.

6. Subsequent amendments to the Act enabled the Governor, by proclamation, to revest in the Crown the coal that had been restored under the 1990 Act, and to make arrangements for the payment of compensation to claimants in those cases. This "re-acquisition scheme" has 125 applications remaining from a total of 400.[11]

[10] The Hon K A Hickey MP, *Legislative Assembly Hansard*, 6 April 2005. The labyrinthine history of coal ownership in New South Wales is set out in the second reading speech of the *Coal Acquisition Bill 1997*: The Hon R Martin, Minister for Natural Resources, *Legislative Assembly Hansard*, 27 May 1997.

[11] The Hon K A Hickey MP, Second Reading Speech, Legislative Assembly *Hansard*, 6 April 2005.

7. The Minister reported that, following a Commonwealth Grants Commission recommendation, the New South Wales Government moved to an *ad valorem* coal royalty regime in line with that of other States[12]:

> The introduction of the ad valorem coal royalty regime on 1 July 2004 and recent litigation have increased the Board's compensation liability by $116 million. Potential litigation from applications yet to be determined may further increase liability by more than $50 million.[13]

8. The Minister also noted that the Bill does not affect the established entitlements to compensation for the 129 claims and applications that remain to be settled, as they existed prior to the introduction of the *ad valorem* royalty scheme.[14]

The Bill

9. The Act provides for the payment of compensation for coal vested in the Crown under the Act. The Act currently provides that:

- all coal is vested in the Crown except coal granted under the 1990 Act [s 5]; and
- the Governor may make arrangements for the determination of cases and the method and payment of compensation (if any) arising out of the vesting of coal in the Crown under s 5 [s 6].

10. The Bill amends the way in which the determination of payable compensation is to be made for all claims or applications for compensation that have not been finally determined [proposed s 6A].

11. The Bill provides that if royalty is to be included in the determination of a claim for compensation, it is to be calculated under the relevant provisions of the Mining Act or the *Mining Regulation 2003* (the Mining Regulation) as ***in force immediately before 1 July 2004*** [proposed s 6A(2)]. That date is when the provisions relating to the payment of royalty for coal under the Mining Act were changed, and the new *ad valorem* scheme introduced for the payment of royalty.[15]

12. The effect of proposed s 6A(2) is to preserve the previous method of determining royalty for the purposes of compensation claims that have not yet been finally determined.[16]

Super royalty

13. The Bill clarifies the law relating to "super royalty". Super royalty is the term commonly used to refer to additional payments of royalty which were provided for in

[12] The Hon K A Hickey MP, Second Reading Speech, *Legislative Assembly Hansard*, 6 April 2005.
[13] The Hon K A Hickey MP, Second Reading Speech, *Legislative Assembly Hansard*, 6 April 2005.
[14] The Hon K A Hickey MP, Second Reading Speech, *Legislative Assembly Hansard*, 6 April 2005.
[15] The new scheme replaced the rates of royalty payable on coal - which were based on a rate per tonne of coal recovered - with a rate based on a percentage of the value of the coal recovered, with the rate to vary according to the method of mining used to recover the coal.
[16] See Explanatory Note to the Bill.

certain circumstances under the former *Coal Mining Act 1973* and, until 1 July 2004, under the Mining Act. It was abolished by the repeal of the Mining Regulation.

14. Proposed s 6A(3) enables the Board to include super royalty, in appropriate cases, when determining compensation claims under the Act. The calculation of super royalty may *only* relate to a period prior to 1 July 2004. Also, the amount of such royalty is to be calculated in accordance with the relevant legislation as in force immediately before that date [proposed s 6A(4)].

Application of the amendments

15. The Bill also provides that a payment of compensation under the Act is not to take into account any arrangements (eg, a contract) required to be entered into under the Mining Act by the holder of a mining lease or similar authorisation that deals with the supply of coal at a particular price.

16. The Bill makes it clear that proposed s 6A applies only to claims for compensation that have *not* been finally determined, including any claim that is the subject of an appeal, judicial review, or redetermination [proposed s 6A(6)]. It does not affect any payment of compensation that has already been made in relation to a claim that has been finally determined, nor does it entitle any person who has received such a payment to any further compensation in relation to the claim [proposed s 6A(7)].

17. A March 2004 decision of the NSW Court of Appeal gave substantial compensation benefits to claims in the Re-acquisition Scheme; these benefits have flowed on to the few remaining claims for loss of estate in coal outside a colliery holding, in the Compensation Scheme. The Bill does not remove any of these benefits. [17]

Issues Considered by the Committee

18. 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.

[17] *NSW Coal Compensation Board v Nardell Colliery Pty Ltd* [2004] NSWCA 35. "The formula for compensation in line with the Nardell Case has been agreed and these entitlements are recognised by the Government. Nardell-dependent claimants will remain eligible to be compensated for a proportion of the payments made to the State by mining companies when a lease is granted, commonly called front-end payments. These claimants will also be entitled to the benefits of dividend imputation in the discount rate, and for super or additional royalty prior to 1 July 2004, when it was removed by the introduction of the *ad valorem* royalty regime": The Hon K A Hickey MP, Second Reading Speech, *Legislative Assembly Hansard*, 6 April 2005.

3. ENERGY ADMINISTRATION AMENDMENT (WATER & ENERGY SAVINGS) BILL 2005

Date Introduced:	6 April 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Energy & Utilities

Purpose and Description

1. The Bill amends the *Energy Administration Act 1987* to promote savings in water and energy use by, among other things, establishing Water and Energy Savings Funds to be used for conservation initiatives, and to require high energy and water consumers to prepare water or energy savings plans.

Background

2. In the second reading speech, the Minister stated that the reforms are an important part of the Government's Metropolitan Water Plan, released in October 2004.[18]

The Bill

Water and Energy Savings Funds

3. The Bill establishes a Water Savings Fund and an Energy Savings Fund. Money paid into these Funds can be used for a number of purposes, including:
   - to encourage water and energy savings and the recycling of water;
   - to reduce water demand;
   - to address peak demand for energy;
   - to stimulate investment in innovative water and energy savings measures;
   - to increase public awareness and acceptance of the importance of water savings measures and energy savings measures;
   - for cost effective energy savings measures that reduce greenhouse gas emissions; and
   - for contributions made by the State for the purposes of national energy regulation.[19]

4. Proposed section 34J provides that the Minister can, by order in the Gazette, require a State water agency to make an annual contribution for a specified financial year to the Water Savings Fund.

[18] The Hon Frank Sartor MP, Minister for Energy & Utilities, *Legislative Assembly Hansard*, 6 April 2005.
[19] See proposed section 34F and 34L in relation to the Water Savings Fund and the Energy Savings Fund respectively.

5. Proposed section 34P similarly enables the Minister to require distribution network service providers[20] to make contributions to the Energy Savings Fund. The amount of contribution is not to exceed any maximum set by regulation.[21]

6. Other contributions to the Funds may come from, among other sources, appropriations, voluntary contributions or proceeds of investments of money in the Funds.

Water and Energy Savings Plans

7. The Bill also requires designated water and energy users to prepare and submit water or energy savings plans or both.[22] Failure to submit a plan when required to do so is punishable by 50 penalty units ($5,500).[23]

8. The Minister may approve these plans or refer them back for further consideration. A plan may be approved *with such alteration as the Minister thinks fit* [proposed s 34S]. The Minister must consult the designated user concerned before making any alterations to the plan the user had submitted.

9. The Bill enables regulations to provide that savings measures under an approved savings plan are to be implemented by the user concerned and for the Minister to issue directions to the user to that effect. In this way, the Bill provides for savings plans, or parts of savings plans, to be enforceable [proposed s 34V(4)].

Other amendments

10. Other amendments made by the Bill include:

- re-naming the *Energy Administration Act 1987* as the *Energy and Utilities Administration Act 1987;*
- clarifying that the Minister may require the Independent Pricing and Regulatory Tribunal to take into account contributions that Sydney Water Corporation and other State water agencies are required to make to the Water Savings Fund in making pricing determinations for the provision of their water services;
- enabling the Minister to establish advisory committees for the purpose of advising him or her on the exercise of Ministerial functions to be conferred by the proposed Act;

[20] A "***distribution network service provider"*** is defined in the Dictionary in the *Electricity Supply Act 1995* as a person who owns or controls a "***distribution system***", namely the electricity power lines and associated equipment and electricity structures that are used to convey and control the conveyance of electricity to the premises of wholesale and retail customers, or to convey and control the conveyance of electricity to, from and along the rail network electricity system, but does not include a transmission system.

[21] The Hon Frank Sartor MP, Second Reading Speech, *Legislative Assembly Hansard*, 6 April 2005. Proposed s 34P(2)(a) limits annual contributions payable to "an amount that does not exceed the maximum amount, if any, prescribed by regulations".

[22] A designated user who is required to submit both a water savings plan and an energy savings plan can combine them into one plan (s 34Q(1)).

[23] The defence of "reasonable excuse" is provided for under proposed subsection 34V (3) of the Bill.

- enabling the Minister to require certain water and energy service providers to provide information to the Minister about the identity of persons and bodies to which the providers provide water or energy services and the amount of water or energy they consume; and
- making consequential amendments to the *Electricity Supply Act 1995* to enable the regulations under that Act to provide for the cost of contributions made by distribution network service providers to the Energy Savings Fund to be passed through to retail customers of electricity.

11. The Bill also provides that, if a corporation contravenes the Act or regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the provision if the director or person knowingly authorised or permitted the contravention.

Issues Considered by the Committee

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

Commencement by proclamation: Clause 2

12. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.

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

14. The Minister's office has advised that the ensuing Act will commence on proclamation to enable the establishment of the Water and Energy Savings Funds and other administrative arrangements to be in place.

Prescription of "State water agencies": proposed new definition (s 3)

15. The proposed definition of ***State water agency*** includes:

> any other State agency prescribed by the regulations that provides any water service in a water savings area.

16. ***State agency*** means:

> (a) a public or local authority constituted by or under an Act (including a local council), or
>
> (b) a Government Department, or
>
> (c) a statutory body representing the Crown, or
>
> (d) a State owned corporation (including any subsidiary of a State owned corporation) within the meaning of the *State Owned Corporations Act 1989*.

17. Consequently, the Government can prescribe by regulation any State agency in a water savings area, such as a local council, as a State water agency. This would enable the

Minister to require the agency to make specified annual contributions to the Water Savings Fund under proposed s 34J.

18. The Committee notes that enabling the Government to prescribe a State agency as a State water agency by regulation, and thereby subjecting that agency to requirements to make annual contributions, is a significant delegation of legislative power.

19. However, given that any such regulation would be subject to disallowance by either House of Parliament, the Committee does not consider that this comprises an inappropriate delegation of legislative power.

No default maximum of compulsory contributions: Proposed s 34P

20. The Bill provides that the Minister may not set the level of compulsory contributions payable by each distribution network service provider into the Energy Savings Fund above "the maximum amount, if any, prescribed by the regulations" [proposed s 34P(2)(a)].

21. The Bill does not provide a maximum level of contribution in the absence of any maximum set by regulation. Consequently, there will be no maximum level until one is prescribed by regulation following the commencement of the Act and following the automatic appeal of any regulation made.[24]

22. The Committee considers that it is appropriate to vary any maximum compulsory contribution level by regulation as any such variation would be disallowable by Parliament. However, the lack of a default maximum level that applies if no maximum level is prescribed by regulation delegates to the Government the power to determine whether or not there should be a maximum at all.

23. The Committee refers to Parliament the question as to whether not providing a default maximum level of compulsory contributions payable into the Energy Saving Fund if the Government has not set a maximum level by regulation comprises an inappropriate delegation of legislative power.

The Committee makes no further comment on this Bill.

[24] The *Subordinate Legislation Act 1989* repeals all regulations five years after they are made. This repeal may be postponed for one year up to five times.

4. GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL 2005

Date Introduced:	6 April 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Ian MacDonald MLC
Portfolio:	Primary Industries

Purpose and Description

1. The Bill amends the *Game and Feral Animal Control Act 2002* ('Act') with respect to the functions of the Game Council and the application of penalties for offences under that Act.

Background

2. The Game Council of NSW is a body corporate with functions that include representing the interests of licensed game hunters in matters arising under the Act, administering licensing for game hunters, advising the Minister on game and feral animal control and promoting or funding research into game and feral animal control issues. In exercising its functions, the Game Council is to have regard to public safety (s. 9).

The Bill

3. The Bill provides for the Game Council to have the additional functions of:
   (i) promoting, funding, developing or delivering educational courses regarding game animals and animals that interact with game animals; and
   (ii) promoting or funding research into issues regarding animals that interact with game animals [proposed para 9(1)(f)].

4. Currently, section 13 of the Act provides that the Game Council is to maintain a "Game Council Account", into which certain moneys are to be paid, including any game hunting licence fees payable under this Act. Money held in this account can be applied, among other things, for the purpose of carrying out any of the functions of the Game Council.

5. The Bill proposes to amend section 13 to provide that all fines, or amounts payable under penalty notices, recovered in relation offences against that Act or the regulations under that Act to be credited to the Game Council Account [proposed para 13(2)(d)].

Issues Considered by the Committee

6. 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.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

5. CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES) BILL 2005

Date Introduced:	23 February 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Justice

Background

1. The Committee reported on the *Civil Liability Amendment (Offender Damages) Bill 2005* (Bill) in *Legislation Review Digest No 2* of 1 March 2005.

2. The Committee published correspondence on the Bill between the Committee dated 1 March 2005 and the Minister for Justice (Minister) dated 8 March 2005 in *Legislative Review Digest No 3* of 21 March 2005.

3. On 17 March 2005, the Committee wrote to the Minister to seek an explanation of the need for retrospective provisions in the Bill that may adversely affect individuals.

The Minister's Response

4. In his reply of 19 April 2005, the Minister advised the Committee that he addressed the issue raised in the Committee's letter of 17 March 2005 in the second reading debate on the Bill on 6 April 2005.

5. In that debate, the Minister stated:

> The retrospective provisions highlighted by the Legislation Review Committee apply to the provisions of this bill to persons who have already lodged a claim for damages under part 2A of the Civil Liability Act 2002. They do not apply to any litigants who are not already subject to the provisions of this Act, that is, litigants who commenced litigation before the Civil Liability Amendment (Offender Damages) Act 2004 applied.
>
> The retrospective provisions of the bill are justified so that the Act applies consistently to all persons who have already lodged a claim, and those who may subsequently lodge a claim, under part 2A of the Civil Liability Act 2002. The committee's comments refer to changes introduced by proposed new clause 18 to schedule 1 of the Civil Liability Act 2002. Proposed new clause 18 is consistent in its terms with clause 15 to schedule 1 of the Act, which relates to amendments introduced by the Civil Liability Amendment Act 2003.
>
> Subclauses (1) and (2) of clause 18 must be read in conjunction with the qualifications in subclause (3). The proposed amendments will apply only to matters to which part 2A of the Act already apply immediately before this amending Act commences. In particular, the amendments will not apply to any of the circumstances described in paragraph 10 of the draft *Legislation Review Digest*, because those

circumstances are excluded already from the operation of the Act. The proposed legislation has retrospective effect for good reason—to apply consistently and fairly to all claimants. The retrospective effect of the legislation is that persons who have brought a claim under the existing legislation, which was assented to on 19 November 2004, are treated consistently with persons who bring a claim after the legislation commences. Neither group is advantaged or disadvantaged against the other. I commend the bill to the House.

Committee's Conclusion

6. The Committee thanks the Minister for his response.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

17 March 2005

Our Ref: LRC1161
Your Ref:

The Hon John Hatzistergos MLC
Minister for Justice
GPO Box 5341
Sydney 2001

Dear Minister

CIVIL LIABILITY AMENDMENT (OFFENDER DAMAGES) BILL 2005

Thank you for your reply dated 8 March 2005 to the Committee's questions regarding the above bill.

The Committee's concern was not to clarify the scope of the retrospective provisions. The Committee noted limitations on the Bill's retrospective application in paragraphs 9 and 10 of its report. Rather, the Committee is seeking to obtain a justification for the need for any retrospective provisions in the Bill that may adversely affect any person.

The Committee remains of the view that legislation that adversely affects individuals should not be applied retrospectively without a clear justification in the public interest. The Committee therefore seeks an explanation as to why it is necessary for the Bill to apply retrospectively in certain situations so the Parliament can better determine whether this trespass on personal rights is undue.

In its report on the Bill, the Committee noted that while it had previously been explained that the retrospective application of the 2004 Act was "necessary to prevent a flood of speculative claims", that rationale may not be applicable to the current Bill and no other rationale had been given.

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The Committee therefore continues to seek an explanation of why the Bill, which may have an adverse impact on the compensation rights of some persons, retrospectively applies to current proceedings where:

- if the relevant person is an adult, proceedings commenced on or after 15 January 2004; and
- if the relevant person is a child, proceedings commenced on or after 16 March 2004.

Yours sincerely

Peter Primrose MLC
Chairman

New South Wales
Minister for Justice

The Hon. Peter Primrose MLC
Chairman, Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY 2000

19 APR 2005

Dear Mr Primrose

Re: ***Civil Liability Amendment (Offender Damages) Bill 2005***

I refer to your letter of 17 March 2005.

In addition to my letter to you of 8 March 2005, I have addressed the issue of retrospectivity in my Speech in Reply during the Second Reading Debate on the Bill in the Legislative Council on 6 April 2005.

I refer the Committee to that debate and explanation.

Yours faithfully

(John Hatzistergos)

GPO BOX 5341 SYDNEY NSW 2001

6. ELECTRICITY SUPPLY AMENDMENT BILL 2005

Date Introduced:	23 February 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Frank Sartor MP
Portfolio:	Energy & Utilities

Background

1. The Committee reported on this Bill in *Legislation Review Digest No. 2 of 2005*. On 1 March 2005, the Committee wrote to the Minister to seek his advice as to the reason for commencing the Bill by proclamation, and the time within which he expects it to be commenced.

Minister's Response

2. In his response dated 30 March 2005, the Minister stated that he is advised that the Bill is to commence by proclamation as:

> … it is necessary to also amend the *Electricity Supply General Regulation (2001)* to insert a definition of "point of supply" and associated matters for the purposes of the Principal Act.
>
> The Parliamentary Counsel is currently drafting the Regulation and it is anticipated that the Regulation will not be in place by the time the Bill has passed both Houses, as the Regulation also requires a period of stakeholder consultation.

Committee's Conclusion

3. The Committee thanks the Minister for his response.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 March 2005

Our Ref: LRC1167

The Hon F E Sartor MP
Minister for Energy and Utilities
Level 31Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Electricity Supply Amendment Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 2 of 2005*.

The Committee notes that this Bill provides that the ensuing Act is to commence on a day or days to be appointed by proclamation.

The Committee seeks your advice as to the reasons for commencing this Bill by proclamation, and the time within which you expect the Act to commence.

Yours sincerely

Peter Primrose

Peter Primrose MLC
Chairman

NEW SOUTH WALES

MINISTER FOR ENERGY AND UTILITIES
MINISTER FOR SCIENCE AND MEDICAL RESEARCH
MINISTER ASSISTING THE MINISTER FOR HEALTH (CANCER)
MINISTER ASSISTING THE PREMIER ON THE ARTS

DEUS Ref: 05/462
Your Ref: LRC1167

30 MAR 2005

The Hon. Peter Primrose MLC
Chairman
Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

RECEIVED
1 APR 2005
LEGISLATION REVIEW COMMITTEE

Dear Mr Primrose

I refer to your letter of 1 March 2005 requesting reasons for commencing the *Electricity Supply Amendment Bill 2005* by proclamation and the proposed timing or commencement of the Act.

I am advised that it is standard practice to commence legislation by proclamation. In relation to the Bill, it is proposed to commence it by proclamation as it is necessary to also amend the *Electricity Supply General Regulation (2001)* to insert a definition of "point of supply" and associated matters for the purposes of the Principal Act.

The Parliamentary Counsel is currently drafting the Regulation and it is anticipated that the Regulation will not be in place by the time the Bill has passed both Houses, as the regulation also requires a period of stakeholder consultation.

Yours sincerely

Frank Sartor

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7. LEGAL PROFESSION BILL 2004

Date Introduced:	8 December 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Debus MP
Portfolio:	Attorney General

Background

1. The Legal Profession Bill 2004 was assented to on 21 December 2004. The Committee reported on the *Legal Profession Act 2004* (the Act) in *Legislation Review Digest No. 1 of 2005*. On 17 February 2005, the Committee wrote to the Attorney General to seek his advice regarding provisions in the Act that affect a person's privilege against self-incrimination.

2. In particular, the Committee sought the Attorney General's advice on:

   - The rationale for removing the privilege against self-incrimination in relation to offences under the Act and other offences regarding trust accounts and monies, noting that the privilege is a fundamental right which should only be modified to achieve a legitimate aim in the public interest and in a manner proportionate to that aim; and
   - The reason why there is no requirement in the Act that a person be informed of his or her right to object to questioning on the ground that the answers may be incriminating.

Attorney General's Response

3. The Committee received the Attorney General's response on 7 April 2005.

The rationale for removing the privilege with respect to certain offences under the Act

4. In his response, the Attorney General indicated why the privilege with respect to s 639[25] and s 724[26] of the Act has been wholly or partially removed:

> Under s 639, the only reason for the Receiver to bring an action for the recovery of regulated property is to recover that property for a client of the law practice. The Government believes that a legal practitioner should not be able to hide behind the privilege against self-incrimination to avoid information which may lead to a client's property being recovered.

[25] Section 639 of the *Legal Profession Act 2004* provides for examinations before the Supreme Court, on the application of a receiver for a law practice, in relation to the "regulated property of the practice". Regulated property is defined in s 611 of that Act to include trust money, trust property, and other documents and property entrusted to the law practice by another party.

[26] Section 724 of the *Legal Profession Act 2004* provides that a person is not excluded from complying with three specified requirements under the Act on a number of grounds, including the privilege against self-incrimination.

> The privilege against self-incrimination is partially removed by s 724 for information about irregularities in a trust account, the provision of information to the receiver, and provision of information to an investigator under Chapter 6 of the LPA...
>
> It is important that the privilege against self incrimination be restricted as set out in s 724. Legal practitioners are officers of the Court, and are required to uphold high legal and ethical standards. A person should not be an officer of the court with a duty to uphold the law of NSW, while at the same time claiming privilege against self-incrimination. If a practitioner has breached the law, that should be fully investigated so that appropriate disciplinary or other sanctions can be brought.

The rationale for not requiring a person to be advised that they may object to questioning on the ground of privilege

5. In his response to this issue, the Attorney General agreed that:

> ... it would be desirable to include a requirement that:
>
> - a person be informed of their right to object to questioning/requirements, and
> - the nature, extent and consequences of that right to object.
>
> Such a requirement would bring the LPA [Legal Profession Act] in line with s 132 of the *Evidence Act 1995* (NSW), which requires that if it appears to the court that a witness or a party may have grounds for making an application under s 128 of the Act (privilege against self-incrimination), the court must satisfy itself that the person is aware of the effect of that section.
>
> Section 639 of the LPA is a core uniform provision in the Model Legal Profession Bill. This requires the section to be adopted in each jurisdiction in a textually uniform format. Since consistency with the LPA and across jurisdiction is vital, I will refer the amendment to the National Legal Profession Joint Working Group.

Committee's Conclusion

6. The Committee thanks the Attorney General for his response.

7. The Committee welcomes the Attorney General's referral to the National Legal Profession Joint Working Group of the proposal that legislation in all jurisdictions include a requirement that a person be informed of their right to object to questioning and the nature, extent and consequences of that right to object.

8. The Committee has written to the Attorney General to request that it be advised of the outcome of the Working Group's consideration of this issue.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

17 February 2005

Our Ref: LRC1090

The Hon Bob Debus MP
Attorney General
Level 36, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

Legal Profession Act 2004

On 17 February 2005, the Committee considered the *Legal Profession Act 2004* ('the Act'). It resolved to write to you regarding provisions in the Act that affect a person's privilege against self-incrimination.

The Committee notes that the Legal Profession Bill 2004 was assented to on 21 December 2004, having passed both Houses of Parliament in December. Under section 8A(2) of the *Legislation Review Act 1987*, the Committee is not precluded from making a report on a Bill after it has passed a House of Parliament or become an Act.

The Committee notes that a person is not excluded from complying with three specified requirements under the Act on a number of grounds, including the privilege against self-incrimination (s 724). Further, a person examined before the Supreme Court in relation to certain matters is not excused from answering a question because it may incriminate him or her (s 639).

The privilege against self-incrimination is a fundamental right expressed in the common law and in international human rights instruments ratified by Australia. The Committee considers that this privilege should only be modified or restricted to achieve a legitimate aim in the public interest and in a manner proportionate to that aim.

The Committee notes that s 639(4) and s 724(3) of the Act provides some protection against self-incrimination regarding certain offences in other legislation.

The Committee notes that requiring a person to answer questions about a suspected offence in order to prosecute that person for that offence goes to the heart of the privilege against self-incrimination. The Committee therefore requests your advice as to the rationale for removing the privilege against self-incrimination in relation to offences under the Act and other offences regarding trust accounts and monies.

The Committee also notes that that there is no requirement in the Act that a person be advised that they may object to providing self-incriminating information, even though persons who are not lawyers may be subject to questioning pursuant to s 639 and s 724 of the Act. Without such a requirement, a person must be aware of their privilege against self-incrimination in order to have the benefit of it.

The Committee, therefore, also requests your advice as to the reason that there is no requirement in the Act that a person be informed of his or her right to object to questioning on the ground that the answers may be incriminating.

The Committee looks forward to receiving your advice on the above matters.

Yours sincerely

Peter Primrose MLC
Chairman

NEW SOUTH WALES

ATTORNEY GENERAL

The Hon Peter Primrose MLC
Chair
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

RECEIVED
7 APR 2005
LEGISLATION REVIEW COMMITTEE

Dear Mr Primrose

Thank you for your letter of 17 February 2005 about the *Legal Profession Act 2004* (the LPA), and particularly regarding the rationale for removing the privilege against self-incrimination for offences under the Act.

The LPA places sanctions on persons admitted as lawyers under the Act, or persons holding out that they are members of the profession. The object of the LPA is to provide for the regulation of legal practice. In doing so, the LPA regulates those who are invested with responsibility by their clients to transact legal matters. The Act generally only imposes a civil or disciplinary penalty (although a criminal penalty applies to the destruction of legal documents needed for trial) on practitioners.

Section 639 partially removes the privilege against self-incrimination in examinations brought by a Receiver for recovery of regulated property. Regulated property is defined in s 611 as including trust money, trust property, and other documents and property entrusted to the law practice by another party.

Under s 639, the only reason for the Receiver to bring an action for the recovery of regulated property is to recover that property for a client of the law practice. The Government believes that a legal practitioner should not be able to hide behind the privilege against self-incrimination to avoid information which may lead to a client's property being recovered.

The privilege against self-incrimination is partially removed by s 724 for information about irregularities in a trust account, the provision of information to the receiver, and provision of information to an investigator under Chapter 6 of the LPA. However, the practitioner can claim privilege for offences other than those under the Act, providing the practitioner claims privilege before answering questions or providing information.

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It is important that the privilege against self incrimination be restricted as set out in s 724. Legal practitioners are officers of the Court, and are required to uphold high legal and ethical standards. A person should not be an officer of the court with a duty to uphold the law of NSW, while at the same time claiming privilege against self-incrimination. If a practitioner has breached the law, that should be fully investigated so that appropriate disciplinary or other sanctions can be brought.

The Committee also requested advice about why there is no requirement that a person be informed of their right to object to questioning or to provide information, on the grounds that the answers may be incriminating.

The Committee noted that to benefit from the protections in s 639(4) and s724(3) of the LPA, a person must first be aware of the existence of these protections. The protection against self-incrimination is not automatic: the person must actively claim the protection by objecting to individual questions or requirements. This objection must be voiced *before* answering the question or complying with the requirement.

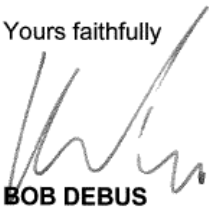
I agree that it would be desirable to include a requirement that:

- a person be informed of their right to object to questioning/requirements, and
- the nature, extent and consequences of that right to object.

Such a requirement would bring the LPA in line with s132 of the *Evidence Act 1995* (NSW), which requires that if it appears to the court that a witness or a party may have grounds for making an application under s128 of the Act (privilege against self-incrimination), the court must satisfy itself that the person is aware of the effect of that section.

Section 639 of the LPA is a core uniform provision in the Model Legal Profession Bill. This requires the section to be adopted in each jurisdiction in a textually uniform format. Since consistency within the LPA and across jurisdictions is vital, I will refer the amendment to the National Legal Profession Joint Working Group.

Yours faithfully



BOB DEBUS

8. PRISONERS (INTERSTATE TRANSFER) AMENDMENT BILL 2005

Date Introduced:	23 March 2005
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Justice

Background

1. The Committee reported on the *Prisoners (Interstate Transfer) Amendment Bill 2005* in Legislation Review Digest No 4 of 2005.

2. The Committee noted that the Bill provided for the ensuing Act to commence on a day or days to be appointed by proclamation and wrote to the Minister for Roads to seek his advice as to the reasons for commencing the Act by proclamation, and a likely commencement date of the Act.

Minister's reply

3. The Minister advised the Committee by letter dated 18 April 2005 (attached) that:

> The *Prisoners (Interstate Transfer) Amendment Bill 2005* amends the *Prisoners (Interstate Transfer) Act 1982*. This Act forms part of a national co-operative legislative scheme permitting the transfer of prisoners between participating Australian jurisdictions for trial and welfare purposes.
>
> The reason this Bill provides that the ensuing Act is to commence by proclamation is to give the other states and territories participating in this national scheme time to introduce equivalent bills into their respective Parliaments. For this reason I am unable to advise the Committee on a likely commencement date for the Act.

Committee's response

4. The Committee thanks the Minister for his reply.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

1 April 2005

Our Ref: LRC1197

The Hon J Hatzistergos MLC
Minister for Justice
Level 25
59-61 Goulburn St
Sydney NSW 2000

Dear Minister

Prisoners (Interstate Transfer) Amendment Bill 2005

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest* No 4 of 2005.

The Committee notes that this Bill provides that the ensuing Act is to commence on a day or days to be appointed by proclamation.

The Committee seeks your advice as to the reasons for commencing this Bill by proclamation, and a likely commencement date of the Act.

Yours sincerely

Peter Primrose

Peter Primrose MLC
Chairman

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New South Wales
Minister for Justice

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19 APR 2005
LEGISLATION REVIEW COMMITTEE

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

18 APR 2005

Dear Chairman

I am writing in response to your letter dated 1 April 2005 about the *Prisoners (Interstate Transfer) Amendment Bill 2005,* which was recently reviewed by the Legislation Review Committee in the *Legislation Review Digest No.4 of 2005.*

The Committee noted that the Bill provides for the ensuing Act to commence on a day, or days, to be appointed by proclamation.

The *Prisoners (Interstate Transfer) Amendment Bill 2005* amends the *Prisoners (Interstate Transfer) Act 1982.* This Act forms part of a national co-operative legislative scheme permitting the transfer of prisoners between participating Australian jurisdictions for trial and welfare purposes.

The reason this Bill provides that the ensuing Act is to commence by proclamation is to give the other states and territories participating in this national scheme time to introduce equivalent bills into their respective Parliaments. For this reason I am unable to advise the Committee on a likely commencement date for the Act.

Yours faithfully

(John Hatzistergos)

GPO BOX 5341 SYDNEY NSW 2001

9. ROAD TRANSPORT (GENERAL) AMENDMENT (LICENCE SUSPENSION) BILL 2004

Date Introduced:	2 June 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Carl Scully MP
Portfolio:	Roads

Purpose and Description

1. The Committee first reported on the *Road Transport (General) Amendment (Licence Suspension) Bill 2004* in its Legislation Review *Digest* No 9 of 2004.

2. The Committee noted that the Bill would provide police officers with expanded powers to suspend driver licences. The Committee also noted that the suspension powers in the Bill were discretionary.

3. As the scope of this discretion was not defined in the Bill, the Committee wrote to the Minister for Roads for advice as to what will guide police officers when deciding whether or not to issue a suspension notice.

4. The Committee also wrote to the Minister for advice as to what guidelines were in place to assist a police officer, an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*, or a member of staff of the State Debt Recovery Office in deciding whether or not to enforce a suspension notice once issued.

Minister's Replies

5. The then Minister for Roads replied to the Committee by letter dated 1 December 2004.

6. At its meeting of 17 February 2005, the Committee further considered the Bill and the Minister's letter.

7. In relation to guidelines for police officers who are to decide whether or not to issue licence suspension notices, the Minister advised that he had referred a copy of the Committee's letter to the Minister for Police for response, after receiving advice from the NSW Police.

8. In reply to the Committee's query regarding the enforcement of a suspension order once issued, the Minister responded that:

> [t]his provision [s 34(7)(e) of the Bill] does not apply to a decision to enforce a suspension notice but rather to a decision to enforce the penalty notice for speeding in excess of 45km/h over the speed limit.

> It has been a long established practice that at any time during the lifecycle of a penalty notice for either a traffic or parking offence, a decision to withdraw the notice remains available. NSW Police, Infringement Processing Bureau or the State Debt Recovery Office can make the decision. The decision to do so rests with the agency that has carriage of the enforcement at the time either representations or other information is brought to its attention that casts doubt as to the appropriateness of the enforcement continuing. A decision to withdraw may be made in consultation between the agencies.
>
> Where a decision is made not to enforce the penalty notice, it will have the consequence of ending the corresponding licence suspension imposed by Police. The ending of the suspension in these circumstances is appropriate and is the intended outcome of the new provisions. It ensures that the licence of a person is restored after it is established that he or she is not responsible for the speeding offence.

9. At that time, the Committee was still awaiting the advice of the Minister of Police as to why the scope of the discretion of police officers in deciding whether or not to issue a suspension notice was not defined in the Bill.

10. On 1 April 2005, the Committee received the response of the new Minister for Police, in which he stated that the Bill's amendments:

> do not provide more power to police officers to suspend a driver's licence per se, rather they provide more offences for which a driver's licence may be suspended. These offences are of a serious nature and include those that may result in the serious injury or death of another person.
>
> The discretionary power of police officers stems from Common Law and is, by its nature, reliant on the individual circumstances of a particular situation. Discretion cannot, therefore, be completely restricted, nor can stringent guidelines be imposed.
>
> Police officers may, however, be required to justify their decisions and actions. Any discretion must be exercised within the confines of the law and community expectations.
>
> NSW Police considers that sections 34(1) and (1A) of the Act provide sufficient guidance to police officers of those situations in which the discretionary power may be exercised. It should be noted that a person must be charged with an offence under these sections before a suspension notice may be given.
>
> With regard to enforcing suspension notices, NSW Police advises that, in cases where an allegation cannot be supported, or is dismissed, the suspension would not be maintained and the driver's licence would be restored, NSW Police has an internal policy addressing the withdrawal of infringement notices and summary or indictable matters before the Court.

Committee's Response

11. The Committee thanks the Minister for his further response.

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

18 June 2004

Our Ref:LRC761/772

The Hon Carl Scully MP
Minister for Roads
Level 36 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

Road Transport (General) Amendment (Licence Suspension) Bill 2004

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bill. The Committee will be reporting its consideration of the Bill in its *Legislation Review Digest No 9 of 2003*.

The Committee notes that the Bill provides police officers with an expanded power to suspend driver licences. The Committee also notes that this is a discretionary power.

The Committee is concerned that the exercise of this power may have a significant impact upon persons who have been charged with an offence set out in the Bill, and should therefore be subject to strict control.

As the scope of the discretion is not defined in the Bill, the Committee has resolved to write to you to seek your advice as to what will guide the discretion of police officers when deciding whether or not to issue a suspension notice

Similarly, the Committee seeks your advice as to the guidelines for a decision by:

(a) a police officer;

(b) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*; or

(c) a member of staff of the State Debt Recovery Office

whether or not to enforce a suspension notice once issued.

Yours sincerely

BARRY COLLIER MP
CHAIRPERSON

M04/5492

NEW SOUTH WALES

Minister for Roads
Minister for Housing
Leader of the House

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

- 1 DEC 2004

Dear Mr Primrose

I refer to a letter from the previous Chairperson, Mr Barry Collier MP, in which he sought advice on issues in relation to the Road Transport (General) Amendment (Licence Suspension) Bill 2004.

I apologise for the delay in responding but I have been awaiting advice from the NSW Police, which has advised that there are broader issues in relation to the application of Police discretion generally. Therefore this matter is best responded to by the Hon John Watkins MP, Minister for Police. I have referred a copy of your letter to the Minister for response.

With respect to your request for advice as to the guidelines for a decision by certain agencies whether or not to enforce a suspension notice once issued, I take it that you refer to the provisions found at Sec 34 (7)(e). This provision does not apply to a decision to enforce a suspension notice but rather to a decision to enforce the penalty notice for speeding in excess of 45km/h over the speed limit.

It has been a long established practice that at any time during the lifecycle of a penalty notice for either a traffic or parking offence, a decision to withdraw the notice remains available. NSW Police, Infringement Processing Bureau or the State Debt Recovery Office can make the decision. The decision to do so rests with the agency that has carriage of the enforcement at the time either representations or other information is brought to its attention that casts doubt as to the appropriateness of the enforcement continuing. A decision to withdraw may be made in consultation between the agencies.

Where a decision is made not to enforce the penalty notice, it will have the consequence of ending the corresponding licence suspension imposed by Police. The ending of the suspension in these circumstances is appropriate and is the intended outcome of the new provisions. It ensures that the licence of a person is restored after it is established that he or she is not responsible for the speeding offence.

Yours sincerely

CARL SCULLY MP
Minister for Roads

Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 Tel.: (02) 9228 4455 Fax.: (02) 9228 4633

NEW SOUTH WALES

Minister for Police
Leader of the House

31 MAR 2005
MT 1867

The Hon P Primrose MLC
Chairperson
Legislation Review Committee
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

RECEIVED
1 APR 2005
LEGISLATION REVIEW COMMITTEE

Dear Mr Primrose

I refer to a letter from the previous Chairperson, Mr Barry Collier MP, in which he sought advice on issues in relation to the *Road Transport (General) Amendment (Licence Suspension) Act 2004*. I apologise for the delay in this response.

In his letter, Mr Collier expressed the concern of the Legislation Review Committee that the scope of the discretion of police officers in deciding whether or not to issue a suspension notice is not defined.

The amendments contained in the Act do not provide more power to police officers to suspend a driver's licence per se, rather they provide more offences for which a driver's licence may be suspended. These offences are of a serious nature and include those that may result in the serious injury or death of another person.

The discretionary power of police officers stems from Common Law and is, by its nature, reliant on the individual circumstances of a particular situation. Discretion cannot, therefore, be completely restricted, nor can stringent guidelines be imposed.

Police officers may, however, be required to justify their decisions and actions. Any discretion must be exercised within the confines of the law and community expectations.

NSW Police considers that sections 34(1) and (1A) of the Act provide sufficient guidance to police officers of those situations in which the discretionary power may be exercised. It should be noted that a person must be charged with an offence under these sections before a suspension notice may be given.

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With regard to enforcing suspension notices, NSW Police advises that, in cases where an allegation cannot be supported, or is dismissed, the suspension would not be maintained and the driver's licence would be restored. NSW Police has an internal policy addressing the withdrawal of infringement notices and summary or indictable matters before the Court.

Yours sincerely

CARL SCULLY MP
Minister for Police

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Centennial Park and Moore Park Trust Regulation 2004	27/08/04	6699	05/11/04 29/04/05	21/04/05
Institute of Teachers Regulation	21/01/05	183	01/04/05	
Mental Health Amendment (Transfer of Queensland Civil Patients) Regulation 2005	08/04/05	1245	29/04/05	
Occupational Health and Safety Amendment (Transitional) Regulation 2004	17/12/04	9354	01/04/05	
Protection of the Environment Operations (General) Amendment (Luna Park) Regulation 2005	11/03/05	698	29/04/05	
Road Transport (General) Amendment (Driver Licence Appeals) Regulation 2005	14/01/05	111	01/04/05	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
Centennial Park and Moore Park Trust Regulation 2004 • Letter dated 05/11/2004 to the Minister for Tourism and Sport and Recreation • Letter dated 21/04/2005 from the Minister for Tourism and Sport and Recreation • Letter dated 29/04/2005 to the Minister for Tourism and Sport and Recreation	27/08/2004 page 6699

1. Centennial Park and Moore Park Trust Regulation 2004

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

5 November 2004

Our Ref: LRC925

The Hon S. C. Nori MP
Minister for Tourism and Sport and Recreation
Level 34 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Centennial Park and Moore Park Trust Regulation 2004

On 5 November 2004, the Committee considered the above Regulation pursuant to s 9 of the *Legislation Review Act 1987*.

It resolved to write to you regarding the Regulation, as well as the Regulatory Impact Statement (RIS) published by the Centennial Park and Moore Park Trust (Trust) in July 2004. The Trust forwarded the RIS to the Committee by letter dated 10 September 2004.

The Committee is concerned that revenue from fines is considered to be a benefit to the community under the cost benefit analysis of the RIS.

The Committee notes that, in an analysis of costs and benefits, a fine is, in economic terms, merely a transfer and is not accompanied by a contribution to production (cf NSW Department of Business and Regional Development *Regulatory Impact Statement Manual* 1993, p 107). The payment of a fine, in itself, provides no net benefit to the community. Any community benefit from a fine arises primarily from the prevention of unwanted behaviour and should be assessed accordingly.

The Committee further notes that the purpose of a RIS is to determine net community benefits rather than the benefit to any particular agency.

The Committee is also concerned that many of the maximum penalties under the Regulation do not appear to be in keeping with the severity of the offence or, for example, the penalties under the *Summary Offences Act 1988*.

The Committee understands that any maximum sentence can only be imposed by a court which would have regard to the severity of any offence committed. It nevertheless considers that legislation which creates an offence should give an indication of its relative severity. The Committee also considers that regulations generally should not impose more severe sentences for offences than Parliament has set for equivalent offences.

Yours sincerely

Peter Primrose MLC
Chairman

The Hon Sandra Nori MP
Minister for Tourism and Sport and Recreation
Minister for Women

2 1 APR 2005

RML: B19420

RECEIVED
26 APR 2005
LEGISLATION REVIEW COMMITTEE

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

Dear Mr Primrose

I refer to your letter regarding the Centennial Park and Moore Park Trust Regulation 2004. I apologise for the delay in replying.

The Centennial Park and Moore Park Trust acknowledges the matters raised by the Legislative Review Committee concerning the benefits of the Regulation and the system of penalties to the community. The Trust reaffirms that the intention of the system of penalties is to deter anti-social behaviour. The Trust, as custodian of the Trust's lands is responsible for ensuring the enjoyment for all park users and to protect the Parklands' natural and historic environment. The Trust has informed me that the focus of its policy is to educate, warn and infringe as a last resort.

Whilst the Trust's Regulations stipulate 10 penalty units, this is significantly less than the 40 penalty units imposed under the *Summary Offence Act 1988* for damage to or desecration of a protected place.

I trust the above clarifies the concerns outlined by the Committee.

Yours sincerely

SANDRA NORI MP
Minister for Tourism and Sport and Recreation
Minister for Women

Level 34, Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000
Telephone: (61 2) 9228 5055 Facsimile: (61 2) 9228 4544

PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

29 April 2005

Our Ref: LRC925

The Hon S C Nori MP
Minister for Tourism and Sport and Recreation
Level 34 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Centennial Park and Moore Park Trust Regulation 2004

I refer to your letter of 21 April 2005 regarding the above Regulation. The Committee has considered your response and has resolved to write to you again for further clarification.

You note in your letter that the focus of the Trust's policy is to educate, warn and infringe as a last resort. Despite this policy, the Committee notes that, according to the Regulatory Impact Statement prepared for the Regulation, Rangers for the Centennial Park and Moore Park Trust issued some 2,455 penalty notices in the 2003-04 financial year, collecting around $265,000.

In your letter, you also stated that the 10 penalty units for offences under the Regulation "is significantly less than the 40 penalty units imposed under the *Summary Offence Act 1998* for damage to or desecration of a protected place." The Committee considers that this does not explain why various offences in the Regulation, some of which are minor compared to desecration of a protected place, should have relatively severe penalties, in some cases exceeding penalties for equivalent offences under the *Summary Offences Act 1988*. The Committee also notes that damaging or desecrating protected places under s 8(2) of the *Summary Offences Act 1988* carries a maximum penalty of 20 penalty units.

In this regard, the Committee notes that clauses 16(n) and 18(b) impose a 10 penalty unit maximum fine for depositing or throwing any article or substance into any lake, pond, stream or ornamental water, or bathing, wading, washing or swimming in any lake, pond, stream or ornamental water (other than the fountain located in the Centennial Park Cafe forecourt area). In contrast, s 7 of the *Summary Offences Act* imposes only a maximum penalty of 4 penalty units for damaging, entering or causing any foreign material to enter, a fountain.

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Also, the maximum penalty of 10 penalty units for using indecent, obscene, insulting or threatening language under cl 25(a) contrasts with the maximum penalty of 6 penalty units for using offensive language in or near, or within hearing from, a public place or a school, unless the defendant had a reasonable excuse, under s 4A of the *Summary Offences Act*.

The Committee again seeks an explanation of why the Regulation prescribes the same maximum penalty for both significant and relatively trivial offences, particularly when some of those penalties are in excess of penalties set by Parliament for equivalent offences in the *Summary Offences Act*.

Yours sincerely

Peter Primrose MLC
Chairman

Appendix 1: Index of Bills Reported on in 2005

	Digest Number
Civil Liability Amendment (Food Donations) Bill 2004	1
Civil Liability Amendment (Offender Damages) Bill 2005	2, 3
Civil Procedure Bill 2005	5
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	3
Coal Acquisition Amendment (Fair Compensation) Bill 2005	5
Court Security Bill 2005	2
Crimes Amendment (Grievous Bodily Harm) Bill 2005	3
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	3
Criminal Procedure Amendment (Evidence) Bill 2005	3
Criminal Procedure Further Amendment (Evidence) Bill 2005	4
Crown Lands Amendment (Access to Property) Bill 2005*	4
Electricity Supply Amendment Bill 2005	2, 5
Energy Administration Amendment (Water and Energy Savings) Bill 2005	5
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004	1
Game and Feral Animal Control Amendment Bill 2005	5
Independent Commission Against Corruption Amendment Bill 2005	2, 3
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	1
Legal Profession Bill 2004	1, 5
Marine Safety Amendment (Random Breath Testing) Bill 2004	1
National Parks and Wildlife (Adjustment of Areas) Bill 2005	3
Photo Card Bill 2004	1
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	2
Prisoners (Interstate Transfer) Amendment Bill 2005	4, 5
Protection of Agricultural Production (Right to Farm) Bill 2005*	4
Road Transport (General) Bill 2004	1, 4
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	1, 4
Sheriff Bill 2005	2
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	1
Standard Time Amendment (Co-ordinated Universal Time) Bill 2005	2
Transport Administration Amendment (Transport Levy For Major Events) Bill 2005	2
Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*	2
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	3

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

Bill	Minister/Member	Letter sent	Reply	Digest 2004	Digest 2005
Child Protection (Offender Prohibition Orders) Bill 2004	Minister for Police	18/06/04		6	
Civil Liability Amendment (Offender Damages) Bill 2005	Minister for Justice	01/03/05	08/03/05		2, 3, 5
Electricity Supply Amendment Bill 2005	Minister for Energy and Utilities	01/03/05	30/03.05		2, 5
Independent Commission Against Corruption Amendment Bill 2005	Premier	01/03/05	02/03/05		2, 3
Legal Profession Bill 2004	Attorney General	17/02/05	07/04/05		1, 5
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04	09/12/04	17	1
Marine Safety Amendment (Random Breath Testing) Bill 2004	Minister for Ports	17/02/05			1
Photo Card Bill 2004	Minister for Roads	17/02/05			1
Prisoners (Interstate Transfer) Amendment Bill 2005	Minister for Justice	01/04/05	18/04/05		4, 5
Road Transport (General) Bill 2004	Minister for Roads	17/02/05	14/03/05		1, 4
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04	01/12/04	9	1, 5
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	Minister for Roads	17/02/05	14/03/05		1, 4
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04		15	

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

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Civil Liability Amendment (Food Donations) Bill 2004	N			N	
Civil Liability Amendment (Offender Damages) Bill 2005	N,C				
Civil Procedure Bill 2005	N			N	
Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill 2005*	R				
Court Security Bill 2005				N	
Criminal Appeal Amendment (Jury Verdicts) Bill 2004*	R				
Criminal Procedure Amendment (Evidence) Bill 2005	N				
Criminal Procedure Further Amendment (Evidence) Bill 2005	C			N	
Electricity Supply Amendment Bill 2005				C	
Energy Administration Amendment (Water and Energy Savings) Bill 2005				R, N	
Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004			N	N	N
Independent Commission Against Corruption Amendment Bill 2005				C	
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Bill 2004	R			N	
Legal Profession Bill 2004	N,C			N	
Marine Safety Amendment (Random Breath Testing) Bill 2004				C	
National Parks and Wildlife (Adjustment of Areas) Bill 2005				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Photo Card Bill 2004				C	
Police Integrity Commission Amendment (Shaw Investigation) Bill 2005*	N				
Prisoners (Interstate Transfer) Amendment Bill 2005				C	
Protection of Agricultural Production (Right to Farm) Bill 2005*	R				
Road Transport (General) Bill 2004	N	C		C	
Road Transport Legislation (Speed Limiters) Amendment Bill 2004	N			C	
Sheriff Bill 2005				N	
Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004	R, N				
Water Efficiency Labelling and Standards (New South Wales) Bill 2005	N			N	N

Key

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

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

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