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Legislation Review Committee

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TABLE OF CONTENTS

Membership & Staff	ii
Functions of the Legislation Review Committee	iii
Part One – Bills	1
SECTION A: Comment on Bills	1
1. Juvenile Offenders Legislation Amendment Bill 2004	1
2. Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004 ...	9
3. Local Government Amendment (Public-Private Partnerships) Bill 2004	11
4. NSW Self Insurance Corporation Bill 2004	16
5. Rookwood Necropolis Amendment Bill 2004	18
6. Statute Law (Miscellaneous Provisions) Bill (No 2) 2004	21
7. Workers Compensation and Other Legislation Amendment Bill 2004	23
SECTION B: Ministerial Correspondence — Bills Previously Considered	30
8. Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	30
Part Two – Regulations	35
SECTION A: Regulations about which the Committee is Seeking Further Information	35
SECTION B: Copies of Correspondence on Regulations	36
1. Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004.....	37
2. Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004	41
3. Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	45
Appendix 1: Index of Bills Reported on in 2004	47
Appendix 2: Index of Ministerial Correspondence on Bills in 2004.....	52
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004	55
Appendix 4: Index of correspondence on regulations reported on in 2004.....	61

* Denotes Private Member's Bill

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

Part One – Bills

SECTION A: COMMENT ON BILLS

1. JUVENILE OFFENDERS LEGISLATION AMENDMENT BILL 2004

Date Introduced:	18 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Diane Beamer MP
Portfolio:	Juvenile Justice

Purpose and Description

1. The Bill amends the *Children (Criminal Proceedings) Act 1987* (CCPA), the *Children (Detention Centres) Act 1987* (CDC Act) and the *Crimes (Administration of Sentences) Act 1999* (CAS Act) so as to:
 - enable offenders who are dealt with under the CCPA (otherwise than by the Children's Court) to be required to serve any sentence of imprisonment imposed on them either at a detention centre or at a proposed juvenile correctional centre;
 - modify the scheme established under the CDC Act for the transfer of juvenile offenders between detention centres and correctional centres; and
 - provide for the management of juvenile offenders within the correctional centre system under the CAS Act, including, in particular, the establishment of juvenile correctional centres within that system.

Background

2. The Bill has been introduced in the wake of the Dalton Report into Kariiong Juvenile Justice Centre on the Central Coast:

As Mr Vern Dalton found when he undertook his review into Kariiong, the detainees at the centre are a small but challenging group who should be distinguished from the mainstream juvenile justice population. In many cases, they have committed offences of the most serious kind: murder, aggravated sexual assault, violent robberies, serious drug crime or serious assaults of staff and other detainees...

[These offenders] were, nonetheless, juveniles when the offences were committed. The Government is presented with a significant challenge in both appropriate management and putting in place rehabilitative measures and safeguards to facilitate their eventual safe return to society. For that reason special arrangements have been put in place to transfer Kariiong to the administration of the Department of Corrective Services...The bill is one part of a systematic approach to the management of that group of young offenders. A working party has been established with representatives from the Department of Juvenile Justice, the Department of Corrective Services and

Juvenile Offenders Legislation Amendment Bill 2004

the Attorney General's Department. That varied representation will ensure that a balance is maintained between security concerns and the needs and welfare of the detainees.¹

3. The Minister noted in the second reading speech:

[t]he bill reflects recognition by the Government that some older detainees are better suited to the environment of the Department of Corrective Services, either due to the seriousness of their offence or because of their behaviour. The bill also reflects the significant changes in the profile of juvenile offenders over the past 10 years. That profile is of more sophisticated, more hardened and violent individuals, with criminal records including gang rape, aggravated assault and murder. The proposals in the bill reflect the Government's ongoing commitment to the rehabilitation of young offenders by ensuring that well behaved offenders who have committed less serious offences are not tainted by association with older, more sophisticated offenders.

Further, it is the Government's view that those older, more serious offenders are best managed in the secure disciplined environment of Corrective Services.²

The Bill

4. The Bill provides that that an order under s 19 of the CCPA³ will require a sentence of imprisonment imposed by a court to be served "as a juvenile offender" rather than – as is currently the case – "in a detention centre" [proposed amended s 19].⁴

5. This amendment supports the scheme whereby young offenders may, in accordance with the proposed amendments to the CDC Act, be transferred to a juvenile correctional centre:

The effect of such an order is that the person to whom the order relates will be committed to a detention centre (see subsection (6)). There he or she will be detained as specified in the order. In certain circumstances, he or she may subsequently be transferred to a juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*.⁵

6. To facilitate this change, the Bill provides that a warrant issued in relation to a sentence given under amended s 19 must:

- indicate that the sentence is the subject of such an order;
- specify how much of the sentence is to be served as a juvenile offender; and
- despite the provisions of s 19, commit the person to whom it relates to a detention centre [proposed new s 19(6)].

¹ Mr M Orkopolous MP, Member for Swansea, Legislative Assembly *Hansard*, 18 November 2004.

² Hon D Beamer MP, Minister for Juvenile Justice, Legislative Assembly *Hansard*, 18 November 2004.

³ The current s 19 was added to the *Children (Criminal Proceedings) Act 1987* by the *Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001*, so that a person convicted of a serious children's indictable offence is ineligible to be imprisoned in a detention centre beyond the age of 18 unless the court determines there are special circumstances to justify it, or if the term of imprisonment will end within six months of his or her eighteenth birthday. A child is defined in the Act as a person under the age of 18 years [s 3].

⁴ Section 19(1) currently provides that if a court sentences a person under 21 years of age to whom Division 4 applies to imprisonment in respect of an indictable offence, the court may make an order directing that the whole or any part of the term of the sentence of imprisonment be served in a detention centre.

⁵ New note to s 19 of the *Children (Criminal Proceedings) Act 1987*.

Amendment of Children (Detention Centres) Act 1987 ⁶

Transfers of juvenile inmates from correctional centres to detention centres

7. The Bill inserts new definitions of *correctional centre*, *inmate*, *juvenile correctional centre*, *juvenile inmate*, and *older detainee* into s 3(1) of the CDC Act.
8. The Bill allows juvenile inmates of a correctional centre to be transferred to a detention centre by order of the Minister administering the CAS Act, made with the consent of the Minister administering the CDC Act. This is an existing power [proposed s 10(1) of the CDC Act].
9. The Bill also creates a *new* power, whereby juvenile inmates of a juvenile correctional centre may be transferred by order of the Commissioner of Corrective Services (the Commissioner) made with the consent of the Director-General of the Department of Juvenile Justice (the Director-General) [proposed new s 10(2) of the CDC Act].
10. The Commissioner may only exercise the new power in relation to juvenile inmates who have previously been transferred to the correctional centre system from a detention centre [proposed s 10(3) of the CDC Act].

Transfers of older detainees from detention centres to juvenile correctional centres

11. The Bill provides that *older detainees* (ie, detainees who are of or above 16 years of age) may be transferred to a juvenile correctional centre by order of the Director-General, made with the consent of the Commissioner [proposed new s 28(1) of the CDC Act].⁷
12. Such an order may not be made, unless the older detainee:
 - has previously been transferred to a detention centre from a correctional centre;
 - is on remand for a serious children's indictable offence;
 - has been committed to a detention centre under s 19 of the CCPA; or
 - has behaved in a way that warrants transfer [proposed s 28(2) of the CDC Act].
13. *A serious children's indictable offence* means:
 - homicide;
 - an offence punishable by imprisonment for life or for 25 years;

⁶ The objects of the *Children (Detention Centres) Act 1987* are to ensure that:

- (a) persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law;
- (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved, and
- (c) satisfactory relationships are preserved or developed between persons on remand or subject to control and their families: s 6(1) of the *Children (Detention Centres) Act 1987*.

⁷ This replaces the existing scheme under which transfers to a correctional centre are effected by order of the Minister administering the *Children (Detention Centres) Act 1987*, made with the consent of the Minister administering the *Crimes Administration of Sentences Act 1999*.

Juvenile Offenders Legislation Amendment Bill 2004

- an offence arising under s 61J (otherwise than in circumstances referred to in subsection (2)(d) of that section) or 61K of the *Crimes Act 1900* (or under s 61B of that Act before the commencement of Sch 1(2) to the *Crimes (Amendment) Act 1989*);
- an offence under the *Firearms Act 1996* relating to the manufacture or sale of firearms that is punishable by imprisonment for 20 years;
- the offence of attempting to commit an offence arising under s 61J (otherwise than in circumstances referred to in subsection (2)(d) of that section) or 61K of the *Crimes Act 1900* (or under section 61B of that Act before the commencement of Sch 1(2) to the *Crimes (Amendment) Act 1989*); or
- an indictable offence prescribed by the regulations as a serious children's indictable offence for the purposes of this Act [s 3 of the CCPA].

Miscellaneous amendments

14. The Bill clarifies that a person who serves a term of imprisonment in a correctional centre as a consequence of having committed a detention centre offence must remain in custody in a correctional centre:
 - for any unexpired portion of a detention order; and
 - for the remainder of any period of remand to which he or she is subject [proposed amended s 28BA(2) of the CDC Act].
15. The Bill further amends s 28BA so as to omit provisions that allow the Children's Court to direct that the person be returned to a detention centre.

Amendment of Crimes (Administration of Sentences) Act 1999

Establishment of juvenile correctional centres

16. The Bill enables the Governor to declare a correctional centre to be a juvenile correctional centre for the purposes of the Act [proposed s 225A of the CAS Act].
17. The second reading speech suggests that the only facility planned to be so declared is Kariong Juvenile Centre:

Kariong Juvenile Correctional Centre will be a specialist facility for offenders in the 16 to 21 years category. The centre will accept transfers from the Department of Juvenile Justice of those older detainees who no longer fit into the juvenile system. These individuals have previously been in the adult prison system, charged with a serious children's indictable offence, or are detainees whose behaviour is such that the Director-General of the Department of Juvenile Justice is satisfied that it warrants their transfer to the adult prison system.⁸

Treatment of juvenile inmates

18. The Bill defines the expressions:

⁸ Hon D Beamer MP, Minister for Juvenile Justice, Legislative Assembly *Hansard*, 18 November 2004.

- *adult correctional centre*, meaning a correctional centre that is not a juvenile correctional centre;
 - *juvenile inmate*, meaning an inmate who is under the age of 21 years; and
 - *s 28 juvenile inmate*, meaning a juvenile inmate who has been transferred to a juvenile correctional centre under proposed s 28 of the CDC Act [proposed s 41A of the CAS Act].
19. Section 28 juvenile inmates must be held in custody in a juvenile correctional centre, subject to the CAS Act [proposed s 41B of the CAS Act].
20. Proposed s 41C deals with the transfer of juvenile inmates between juvenile and adult correctional centres, so that:
- transfers “down” (ie, from an adult to a juvenile correctional centre) are effected by an order by the Commissioner; and
 - transfers “up” (ie, from a juvenile to an adult correctional centre) are effected by an order by the Minister administering the CAS Act [see below].

Transfer of inmates

21. Currently s 23 of the CAS Act provides that the Commissioner may order that an inmate be transferred from one correctional centre to another because:
- (a) the correctional centre is being or is about to be repaired, altered, enlarged or rebuilt;
 - (b) of an outbreak or threatened outbreak in the correctional centre of an infectious disease;
 - (c) the correctional centre has ceased or is about to cease to be a correctional centre;
 - (d) the correctional centre is overcrowded;
 - (e) inmates in the correctional centre need to be separated in compliance with the requirements of the regulations; or
 - (f) of any other reason specified in the order.
22. The Bill provides, in relation to an inmate who is under the age of 18 years, such an order may *not* be made on a ground referred to in s 23(1) (d), (e) or (f) so as to transfer the inmate from a juvenile correctional centre to a correctional centre that is not a juvenile correctional centre [proposed s 23(2)].

The transfer of these inmates to adult correctional centres will be wholly governed by proposed s 41C.

Issues Considered by the Committee

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

Clause 2: Commencement

23. Clause 2 of the Bill provides that the ensuing Act will commence on proclamation.
24. 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.
25. The Committee has been advised by the Minister's office that the Bill is commencing on proclamation to allow the Working Party time to finalise the administrative processes and regulatory functions in relation to the management of Kariong, given that it will continue to detain juveniles, but will now be managed by Corrective Services.
26. It is anticipated that the Bill will be commenced very soon after assent.

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

Proposed s 41C of the Crimes (Administration of Sentences) Act 1999: transfer of juveniles to adult correctional centres

27. Proposed s 41C of the CAS Act provides that the Minister may order that a juvenile inmate under the age of 18 years be transferred from a juvenile correctional centre to an adult correctional centre if the Serious Offenders Review Council (Review Council) so recommends.⁹
28. Any offender under the age of 18 years is a *child* for the purposes of both the CCPA and the CDC Act.
29. The Committee notes that it is an internationally recognised right of children to be detained separately from adult offenders except when it is in the child's interest to do so. Article 37(c) of the *Convention on the Rights of the Child* (CROC) states that:

Every child¹⁰ deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, *every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do*

⁹ The Serious Offenders Review Council is constituted under s 195 of the *Crimes Administration of Sentences Act 1999* to consist of at least 8, but not more than 14 members, of whom:

- (a) 3 are to be judicially qualified persons (referred to as *judicial members*), appointed by the Governor;
- (b) 2 members are to be officers of the Department (referred to as *official members*), appointed by the Commissioner; and
- (c) the remainder (referred to as *community members*) are to be persons who reflect as closely as possible the composition of the community at large, appointed by the Governor.

¹⁰ For the purposes of the Convention, a child means "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier [Article 1]."

so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. [Emphasis added]¹¹

30. However, Australia maintains a reservation¹² to the provisions of Article 37:

In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37(c).¹³

Canada, the Cook Islands, Iceland, New Zealand, Switzerland and the United Kingdom have also filed similar reservations.

31. An order under the amended CAS Act for a “transfer up” of a person under 18 years cannot be made except where the Review Council is satisfied that:

- (a) the inmate wants to be transferred;
- (b) the inmate’s behaviour is such as to warrant the transfer;
- (c) the transfer is in the inmate’s best interests; or
- (d) the inmate is a threat to the personal safety of any person or the security or good order or discipline of the juvenile correctional centre [proposed s 41C(3)].

32. Although Australia has maintained a reservation to CROC, Article 37(c) nevertheless provides an important source of international “best practice” with respect to children.

33. Accordingly, proposed s 41C appears to conflict with Article 37(c) by allowing children to be accommodated with adults for reasons *other* than the best interests of the child, ie, (a), (b) and (d) above.

34. To obtain a recommendation to “transfer up” from the Review Council:

- the Commissioner must apply for an inquiry;
- the juvenile inmate the subject of the inquiry is entitled to be heard, and to be legally represented; and
- the Review Council must co-opt a Children’s Magistrate or former Children’s Magistrate, or a legal practitioner of 7 years’ standing who has experience as a

¹¹ United Nations *Convention on the Rights of the Child*, www.unhcr.ch/html/menu2/6/crc/treaties/crc. Australia ratified the Convention on 17 December 1990.

¹² A “reservation” is a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State: 3667 Article 2, paragraph 1(d), of the *Vienna Convention on the Law of Treaties*

¹³ In August 1998 the Commonwealth Parliament’s Joint Standing Committee on Treaties recommended that Australia withdraw this reservation to the Convention on the Rights of the Child: Recommendation 47. In March 2003 the Commonwealth Government replied to the Joint Standing Committee, advising that it intended to maintain the reservation.

Juvenile Offenders Legislation Amendment Bill 2004

children's advocate (unless such a person is already a member of the Review Council and is available for the inquiry) [proposed s 41D of the CAS Act].¹⁴

35. The document governing the conduct of juvenile correctional facilities in New South Wales - *Standards for Juvenile Custodial Facilities* - states that the underlying principle for care of children in custody is adherence to the 1990 United Nations *Rules for Protection of Juveniles Deprived of their Liberty*.¹⁵
36. The Minister noted that the Department of Corrective Services (which will have responsibility for Kariong) will implement these Standards, "with only slight variations".¹⁶

37. The Committee notes that it is an internationally recognised right of children to be detained separately from adult offenders except when it is in the child's interest to do so. Although Australia has maintained a reservation regarding Article 37(c), it nevertheless provides an important source of international "best practice" with respect to children.
38. The Committee notes that proposed s 41C of the Crimes (Administration of Sentences) Act 1999 allows children to be detained with adults on the recommendation of the Review Council on alternative grounds to the best interest of the child, namely, if the child wants to be transferred, the child's behaviour warrants the transfer, or because of the threat posed by the child.
39. The Committee also notes that this provision can only apply to children of or above 16 years of age who have previously been transferred to a juvenile correctional centre from a detention centre.
40. The Committee also notes that, before making such a recommendation, the Review Council must conduct an inquiry with the assistance of a present or former Children's magistrate or a legal practitioner experienced in child advocacy and at which the child has a right to be heard and represented.
41. The Committee refers to Parliament whether proposed s 41C trespasses unduly on the right of young offenders to be detained separately from adult offenders.

The Committee makes no further comment on this Bill.

¹⁴ The co-opted person has all of the powers and immunities of a member of the Serious Offenders Review Council.

¹⁵ Rule 3 of the Rules states:

The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

"Deprivation of liberty" means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority: Rule 11(b).

¹⁶ Hon D Beamer MP, Minister for Juvenile Justice, Legislative Assembly *Hansard*, 18 November 2004. In summary, the objective of juvenile custodial facilities is to provide a humane, safe and secure environment, which assists young people to address their offending behaviour and to make positive choices about their lives, both during custody and upon their return to the community.

2. LICENSING AND REGISTRATION (UNIFORM PROCEDURES) AMENDMENT (PHOTO ID) BILL 2004

Date Introduced:	19 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon J Della Bosca MLC
Portfolio:	Commerce

Purpose and Description

1. The object of this Bill is to amend the *Licensing and Registration (Uniform Procedures) Act 2002* (the Principal Act) to provide for arrangements under which applicants for selected licences and certificates of registration will be able to satisfy a requirement to provide a photograph of themselves for the purpose of the licence or certificate of registration by either allowing access to a photograph already held by the Roads and Traffic Authority (the RTA) (such as a driver licence photograph) or by having the photograph taken and provided by the RTA.

Background

2. According to the second reading speech:

The principal objectives of the Bill are to improve customer service by giving a licence applicant the choice of reusing an existing photograph on other licences; to improve the integrity and security of photograph identification issued by New South Wales licensing authorities, reducing opportunities for identity theft and fraud; to protect the privacy of a person who provides an identification photograph to a licensing authority; and, importantly, to enable more effective use of the Roads and Traffic Authority infrastructure and resources for taking and securely storing identification photographs

The Bill

3. The Bill applies to licences listed in proposed schedule 3A to the Principal Act [schedule 1[6]]. Proposed schedule 3A lists licences administered by the Commissioner for Fair Trading and the WorkCover Authority. These licences are issued under the *Home Building Act 1989*, the *Property, Stock and Business Agents Act 2002*, chapter 9 of the *Occupational Health and Safety Regulation 2001* and the *Explosives Act 2003*. Schedule 3A can be amended by regulation to add licensing regimes to this photo-access scheme or to omit or amend the schedule [proposed s 80A].
4. The Bill proposes a number of privacy protection mechanisms, including prescribing the manner in which photographs are to be kept, the purposes for which they may be used and the circumstances in which they may be released.

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

5. Clause 2 provides that the Bill is to commence on a day or days to be appointed by proclamation.
6. 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.
7. The Committee has written to the Minister seeking his advice as to the reasons why the proposed Act will not commence on assent and to ask for an indication of the likely date for commencement of this Bill.

The Committee makes no further comment on this Bill.

3. LOCAL GOVERNMENT AMENDMENT (PUBLIC-PRIVATE PARTNERSHIPS) BILL 2004

Date Introduced:	19 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Anthony Kelly MLC
Portfolio:	Local Government

Purpose and Description

1. This Bill amends the *Local Government Act 1993* (the Act) as follows:
 - (a) to institute new requirements for the participation by councils in public-private partnerships, including the requirement for compliance with specified procedures and processes (as set out in guidelines of the Director-General of the Department of Local Government);
 - (b) to establish a Local Government Project Review Committee for the purposes of ensuring that the guidelines are complied with by councils in relation to public-private partnership projects;
 - (c) to require a council to invite tenders before it enters into a contract to form a public-private partnership,
 - (d) to provide that contracts involving entities that are formed by councils will be subject to the same tendering requirements that apply to contracts entered into by councils, and
 - (e) to provide that a council must not form an entity except with the Minister's consent (as is the case at present for corporations that are formed by councils) and must demonstrate that the formation of that entity is in the public interest.

Background

2. The second reading speech states that the Bill implements the recommendations made by Professor Maurice Daly in his report on the outcome of the Liverpool City Council public inquiry into failed development projects that council had entered into with private developers between 1996 and 2003.¹⁷
3. In the course of his inquiry, Professor Daly found that many local councils lack the in-house expertise required to successfully negotiate public-private partnership (PPP) arrangements and he made a number of recommendations to assist councils in this process while protecting community interest from inappropriate projects under a PPP. The Bill gives effect to his recommendations by providing a regulatory framework within which local government can benefit from such PPPs.¹⁸

¹⁷ Mr David Campbell MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 19 November 2004.

¹⁸ Mr David Campbell MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 19 November 2004.

The Bill

4. The Bill establishes a number of conditions councils must meet before entering into binding contracts with private partners. Specifically, a council must not form a PPP or carry out a project under a PPP unless it has complied with proposed Part 6 of Chapter 12 of the Act. Among other things, proposed Part 6 imposes an external review process for significant or high-risk projects.
5. "Significant projects" are defined in the Bill to include projects worth more than \$50 million, or any project in which the council's equity in the project amounts to 25% or more of the council's annual revenue available for facilities or services to which the project relates [proposed s 400B].
6. The Director-General may make guidelines requiring specified procedures that must be followed in the making of, and carrying out of projects under, a PPP. These guidelines can include provisions requiring feasibility and risk assessment and appropriate management structures for the project and auditing requirements [proposed s 400C]. The guidelines are binding.
7. The external review body proposed by the Bill is the Local Government Project Review Committee [proposed s 400J]. The Director-General will chair the Review Committee and may appoint persons with special expertise as members (including from the private sector). Other members of the Committee will be the Director-Generals of the Premier's Department, Cabinet Office and the Department of Infrastructure, Planning & Natural Resources and the Secretary of the Treasury.
8. Councils will be required to undertake a risk assessment for all proposed PPP projects to be reviewed by the Department of Local Government [proposed s400F]. Any projects considered by the Department as high risk, regardless of their size, also will be referred to the Review Committee [proposed s 400F]. The Minister also has the power to refer a project to the Review Committee for review at any stage [proposed s 400G].
9. Councils must follow this same procedure in respect of any significant variations proposed or made to PPP projects [proposed s 400H].
10. A decision by the Review Committee as to whether a council has complied with the PPP guidelines in relation to a project is final and cannot be reviewed by any court or tribunal [proposed s 400I(4)].
11. The requirements set out in proposed Part 6 apply retrospectively from 28 June 2004. They apply to any PPP a council may have resolved to form on or after that date, even if the PPP had not yet been formed at that time [proposed s 400N].
12. The Bill makes it clear that no compensation is payable by the State in respect of the application of proposed Part 6. In addition, no compensation is payable by a council to a private person as a consequence of a council being prevented under proposed Part 6 from forming a PPP or carrying out a PPP project [proposed s 400K]. However, an exception to this rule is provided in relation to a council if the PPP concerned is affected by the retrospective application of Part 6 under proposed 400N(2).

Issues Considered by the Committee

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

Retrospectivity, Clause 5 (proposed s 400N)

13. Under proposed section 400N, the requirements set out in proposed Part 6 apply retrospectively from 28 June 2004. They apply to any PPP a council may have resolved to form on or after that date.
14. The second reading speech states that 28 June 2004 was the day on which the Government advised Parliament that it intended to accept the recommendations of the Liverpool City Council public inquiry and would legislate to give effect to those recommendations relating to PPPs. Local councils were later informed of the Government's intention by letter dated 21 July 2004.¹⁹
15. The second reading speech also states that:

Were the proposed legislative framework not to apply retrospectively, it is possible that a number of councils, under perceived pressure from potential commercial partners, may fast-track projects to specifically avoid its requirements. Such a headlong rush would not serve public interest.²⁰
16. The Committee will always be concerned to identify where retrospective legislation has an adverse impact on any person. The Committee will also be concerned to identify legislation that is taken to apply from a date on which the government announces its intention to legislate in the particular area.
17. The Senate Scrutiny of Bills Committee has stated that this approach:

carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by the Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality. It places the Parliament in the invidious position of either agreeing to the legislation without significant amendment or bearing the odium of overturning the arrangements which many people may have made in reliance on the Ministerial announcement. Moreover, quite apart from the debilitating effect of the practice on the Parliament, it leaves the law in a state of uncertainty... The legislation when introduced may differ in significant details from the terms of the announcement. The Government may be unable to command a majority in the [upper house] to pass the legislation giving effect to the announcement or it may lose office before it has introduced the relevant legislation.²¹

¹⁹ Mr David Campbell MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 19 November 2004.

²⁰ Mr David Campbell MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 19 November 2004.

²¹ Senate Scrutiny of Bills Committee, *Annual Report 1986-87*, at 12-13.

18. The Committee will always be concerned to identify where legislation is taken to apply from a date on which the Government announced its intention to legislate rather than on commencement of the legislation. Where such retrospectivity has an adverse impact on any person, the Committee is of the view that this trespasses on that person's right to be able to rely on the law.
19. The Committee notes that the retrospective application of Part 6 may have an adverse impact on any person who has relied on a PPP established between 28 June 2004 and the commencement of the Bill. Compensation by the council is not excluded for damages arising from this retrospective application.
20. The Committee further notes the Minister's explanation that such retrospective application is required to prevent the establishment of PPPs during that period with the intention of avoiding the provisions of the Bill.
21. The Committee refers to Parliament the question of whether the retrospective application of Part 6 is an undue trespass on individual rights and liberties.

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

Ouster clause: Clause 5 (proposed subsection 400I(4))

22. Proposed subsection 400I(4) provides that there is no review of a decision by the Review Committee as to whether a council has complied with the PPP guidelines in relation to a project.
23. The Committee is of the view that review of administrative decisions, especially external review, is an important mechanism to ensure the appropriate exercise of executive power. It ensures that the executive does not have the final authority to determine the legality of its own behaviour.²² It also allows a person aggrieved by a decision to seek review of that decision from an independent authority with power to determine whether the decision was properly, fairly or lawfully made. The Committee is of the view that the guarantees afforded by administrative review are central to Australia's system of governance.
24. Proposed section 400I prevents any review of a decision by the Review Committee that a council has failed to comply with the PPP guidelines. Under the Bill, the effect of such a decision is that the council cannot form the PPP or undertake the PPP project in question. A number of parties may be adversely affected by such a decision, including the council, its private partners and the members of the community the council represents. The decision may have significant financial implications for the council and its PPP partners. It may also have a significant and adverse effect on the community concerned if, for example, the PPP project was to provide much-needed facilities or services to that community.
25. Without the possibility of review of a decision by the Review Committee on whether a council complied with the guidelines, those affected by the decision have no recourse

²² Roger Douglas, *Administrative Law* 2nd Edition. Butterworths 2004.

if they believe the decision was unfairly or wrongly made. The Committee is of the view that failing to provide for any such review may trespass on individual rights.

26. On the other hand, the Committee notes the principal objective of this legislation is to better protect local communities from inappropriate and possibly costly decisions of local councils in relation to the formation of PPPs and the undertaking of PPP projects. The Committee considers that this broader public interest objective must be balanced with the rights of individuals affected by a decision of the Review Committee to have that decision reviewed by an impartial authority.

27. The Committee refers to Parliament the question as to whether preventing review of a decision of the Review Committee as to whether a council has complied with PPP guidelines makes individual rights and liberties unduly dependent on non-reviewable decisions.

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

Commencement by proclamation, Clause 2

28. Clause 2 provides that this Bill is to commence on a day or days to be appointed by proclamation. The Committee notes that providing for an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence 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.
29. The Minister's office has advised the Committee that the Bill is commencing on proclamation to ensure that the guidelines for councils entering into PPPs are in place when the Bill commences. Consultation on the guidelines is currently underway with the Treasury, the Department of Commerce and planning groups. The Minister's office further advised that the Bill would commence as soon as possible, concurrently with the guidelines coming into force.

The Committee makes no further comment on this Bill.

4. NSW SELF INSURANCE CORPORATION BILL 2004

Date Introduced:	19 November 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Michael Egan MLC
Portfolio:	Treasurer

Purpose and Description

1. The NSW Insurance Ministerial Corporation (NSW IMC) is a body corporate constituted under the *Government Insurance Office (Privatisation) Act 1991*. The object of this Bill is to reconstitute the NSW IMC as the *NSW Self Insurance Corporation* and to clarify its functions and powers as the provider of self-insurance arrangements for government agencies.
2. At the time of the privatisation of the Government Insurance Office (GIO), a number of funds, schemes and accounts relating to the self insurance of certain liabilities of the State and authorities of the State were transferred from the GIO to the newly constituted NSW IMC. These funds, schemes and accounts are broadly known as Government managed fund schemes. Other functions relating to the management of liabilities of the State and authorities of the State have also been given to the NSW IMC, including functions relating to workers compensation self insurance under the *Workers Compensation Act 1987*.

Background

3. The second reading speech states that:

The NSW IMC was originally constituted by section 24 of the *Government Insurance Office (Privatisation) Act 1991* for the purpose of receiving and managing residual assets, liabilities, rights and obligations of the Treasury Managed Fund, the Pre Managed Fund Reserve, the Governmental Workers Compensation Account and the Transport Accidents Compensation Fund. Those had been part of the business undertaking of GIO Australia Holdings Limited when it was in Government ownership.

The Treasury Managed Fund is a scheme of self-insurance that protects the insurable assets and exposures of its members. Fund members include all public sector agencies financially dependent on the Consolidated Fund, all public hospitals and a number of statutory authorities. The three other schemes are now closed and the residual liabilities are being managed through the [NSW IMC].

Since the GIO's privatisation in 1992, the GIO has been retained by the [NSW IMC] as the manager of the four schemes. Contracts with GIO General Limited, which is now a subsidiary of Suncorp Metway Insurance Limited, expire on 30 June 2005. The [NSW IMC], which is administered by the New South Wales Treasury, is taking the opportunity to implement fundamental reforms to the arrangements by which claims management services are provided to government agencies in New South Wales.

It is intended to create a contestable market for the provision of services. This is to be achieved by unbundling the range of activities currently incorporated under one contractual arrangement into separate contracts for actuarial and information services, risk management services, insurance broking services and claims management

services, which themselves will be broken down by line of business to encourage up to five providers to tender for those services.²³

Issues Considered by the Committee

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

Issue: Commencement by proclamation, Clause 2

4. Clause 2 provides that this Bill is to commence on a day or days to be appointed by proclamation. The Committee notes that this 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.
5. Treasury has advised the Committee that the Bill is to commence on proclamation to enable time for the evaluation of tenders (which closed on 19 November 2004) and to allow for consultation to occur with the successful tenderers. As the Government's current insurance contract with GIO expires in June 2005, Treasury anticipates proclamation is likely to occur in the first half of 2005.

The Committee makes no further comment on this Bill.

²³ Mr Tony Stewart MP, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 19 November 2004.

5. ROOKWOOD NECROPOLIS AMENDMENT BILL 2004

Date Introduced: 19/11/04
House Introduced: Legislative Assembly
Minister Responsible: The Hon Tony Kelly MLC
Portfolio: Lands

Purpose and Description

1. The object of this Bill is to amend the *Necropolis Act 1901* so as to:
 - (a) allow land to be set aside within the Rookwood Necropolis for the purposes of denominational crematoria;
 - (b) enable appeals to be made to the Land and Environment Court against a valuation by the Valuer-General of the lease of land within the Rookwood Necropolis that is leased for the purposes of a general crematorium;
 - (c) clarify certain provisions with respect to the assessment of the annual contributions that are payable to the Joint Committee of Necropolis Trustees by the various reserve trusts that manage the cemeteries within the Necropolis;
 - (d) require the reserve trusts that manage the denominational crematoria within the Necropolis to pay fees to the Joint Committee in relation to the cremations carried out by them;
 - (e) clarify the Joint Committee's powers with respect to the recovery of unpaid contributions, fees and other amounts due to it under that Act; and
 - (f) update the Act by way of law revision.
2. The Bill also makes consequential amendments to other Acts and instruments.

Background

3. The Rookwood Necropolis is a 283-hectare burial ground established in 1868 and located in the Sydney suburb of Lidcombe. The Joint Committee of Necropolis Trustees (Joint Committee) manages common infrastructure, such as the roads and drainage, within the area. A number of denominational reserve trusts, which represent religious and national groups, manage dedicated land for burial purposes with the Necropolis. The Joint Committee's maintenance work is funded by rental payments from the lessee of the existing crematorium in the Necropolis and from contributions from each of the trusts.²⁴
4. There is decreasing space available for burials within the area of the Necropolis. The second reading speech states that the Bill will:

... help provide for the sustainable management of Rookwood Cemetery... The Bill will enable land to be set aside within the reserve areas of Rookwood Necropolis for

²⁴ Second reading speech.

denominational crematoria... For faiths that allow cremation this option will extend the viability of existing cemetery space by reducing the land required for internment.²⁵

The Bill

Use of land within the Rookwood Necropolis

5. The Bill empowers the Minister for Lands, by gazettal, to set land aside within the Rookwood Necropolis for use as a cemetery or crematorium generally or for a particular religious denomination, or for conservation as a historic site [Schedule 1, proposed s 6A(1) and (2)].
6. The general crematorium site is deemed to have been set aside for use as a crematorium [Schedule 1, proposed s 6A(3)]. The Bill clarifies how the *Crown Lands Act 1989* applies to Crown land within the Necropolis that is set aside [Schedule 1, proposed s 6A(4)-(6)].
7. The Bill repeals provisions in the *Necropolis Act 1901* relating to the dedication of land, including those that refer to the repealed *Crown Lands Consolidation Act 1913* [Schedule 2, cl 9]. The Bill preserves both dedications of land made under these provisions and existing burial rights granted or sold by the denominational trustees [Schedule 2, cl 58].

Right of appeal against valuations on land on which rent is calculable

8. The Bill allows the lessor or lessee of the general crematorium lease, or the Joint Committee, to appeal to the Land and Environment Court against a valuation by the Valuer-General of the land on which the crematorium is situated [Schedule 1, proposed s 8E]. Any valuation made before the Bill commences is not subject to appeal [Schedule 2, cl 58].
9. Rent on this lease is calculated at 10% of the land value or 5% of the imputed revenue of the crematorium, whichever is higher [*Necropolis Act 1901*, Schedule 4]. Historically the land value has been higher and, accordingly, the review mechanism is said to promote a more equitable process for the determination of rent.²⁶

Funding and administrative provisions

10. The Bill clarifies the way that the Joint Committee determines contributions payable by the reserve trusts, the process for approving the determinations, and the time frame for payment [Schedule 1, proposed s 20B]. The Bill requires each reserve trust that operates a crematorium to pay quarterly fees, to be fixed by regulation, to the Joint Committee [Schedule 1, proposed s 20G]. The Joint Committee is also given a debt recovery capacity [Schedule 1, proposed s 36A].
11. The Bill requires each reserve trust, and the general crematorium lessee, to provide quarterly information to the Joint Committee with respect to the internments and cremations carried out by it [Schedule 1, proposed s 20H].

²⁵ Second Reading Speech.

²⁶ Second Reading Speech.

Issues Considered by the Committee

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

Issue: Commencement by Proclamation [Bill, s 2]

12. The amendments to the *Necropolis Act 1901* in Schedule 1 (that is, amendments that are not by way of law revision) and the consequential amendment of the *Land and Environment Court Act 1979* are to commence by 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 office of the Minister for Lands has advised the Committee that the delay in commencement is to allow for a management review to be completed, involving further consultation with the reserve trustees. The outcome of this review may affect when the provisions in the Bill are to be commenced. The Minister's office anticipates that the Bill will commence early next year, and advise that they will be proclaiming all essential aspects of the Bill as soon as possible.

The Committee makes no further comment on this Bill.

6. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2004

Date Introduced:	19/11/04
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Bob Carr MP
Portfolio:	Premier

Purpose and Description

1. The objects of this Bill are to amend certain Acts, statutory rules and instruments, including for the purpose of effecting statute law revision, to repeal certain Acts, instruments and provisions thereof, and to make other provisions of a consequential or ancillary nature.

Background

2. The second reading speech states:

The form of the bill is similar to that for previous bills on the Statute Law Revision Program. Schedule 1 contains policy changes of a minor and non-controversial nature... Schedule 2 deals with matters of pure statute law revision... Schedule 3 repeals a number of Acts and instruments and provisions of Acts... Schedule 4 contains provisions dealing with the effect of amendments on amending provisions, savings clauses for the repealed Acts and a power to make regulations for savings and transitional matters, if necessary.²⁷

The Bill

3. Schedule 1 makes amendments to 40 Acts and four regulations.
4. Schedule 2 makes minor amendments to 34 Acts, ten regulations, and a number of local environmental instruments and water sharing plans. Amendments proposed in Schedule 2 arise from the repeal of other legislation, the need to correct typographical errors and update terminology.
5. Schedule 3 repeals 24 Acts (in whole or in part), two regulations and five orders made under Acts. Many of the Acts repealed are amending Acts that have already effected changes to other legislation.
6. Schedule 4 contains savings and transitional provisions that are standard in statute law reform bills.

²⁷ Mr Tony Stewart MP, Parliamentary Secretary, *Legislative Assembly Hansard*, 19 November 2004.

Issues Considered by the Committee

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

Commencement by proclamation - Schedule 1.41

7. The proposed amendment to the *Valuation of Lands Act 1916*, which alters how an objection may be made about a valuation, is to commence by proclamation [Schedule 1.41].
8. 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.
9. The office of the Minister for Lands has advised the Committee that this amendment was to commence on proclamation to allow time for the standard form for valuations to be prepared, approved by the Valuer-General, printed and distributed. This process is underway and the Minister's office now anticipates that the amendment will be proclaimed on the day it is assented to.

The Committee makes no further comment on this Bill.

7. WORKERS COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2004

Date Introduced: 19 November 2004
 House Introduced: Legislative Assembly
 Minister Responsible: The Hon John Della Bosca MLC
 Portfolio: Commerce

Purpose and Description

1. The Bill amends the following:
 - *Occupational Health and Safety Act 2000* (OH&S Act);
 - *Workers Compensation Act 1987* (1987 Act);
 - *Workers' Compensation (Dust Diseases) Act 1942* (Dust Diseases Act);
 - *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act); and
 - *Workers Compensation Regulation 2003*.

The Bill

Occupational Health and Safety Act 2000

2. The Bill provides that proceedings for an offence, related to a work incident required to be notified to WorkCover, may be commenced:
 - within 2 years after the occurrence of the work incident; *or*
 - within 6 months of WorkCover becoming aware of the work incident,
 whichever provides the longer period to institute proceedings [proposed s 107A of the OH&S Act].
3. This amendment is to prevent an employer avoiding his or her obligations under the OH&S Act by a combination of deliberate failure to comply with the Act and an effluxion of time.²⁸
4. It was stated in the second reading speech that:

the discretion to prosecute outside the two-year time limit will, of course, not be exercised lightly... WorkCover will develop guidelines to ensure that this power is exercised only where there is a clear need to ensure that an employer is brought to account for a serious workplace incident that was due to a breach of the Act.²⁹

²⁸ Recommendation 19, General Purpose Standing Committee No. 1 *Serious Injury and Death in the Workplace*, May 2004.

²⁹ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

Workers Compensation and Other Legislation Amendment Bill 2004

Workers Compensation Act 1987

5. The Bill increases the maximum amount payable by an employer for reasonable funeral expenses to \$9,000 (from \$2,000) in the case of the death of a worker who leaves no dependants [proposed amended s 27 of the 1987 Act].
6. If compensation is payable for a death resulting from an injury and the worker leaves dependants, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding the maximum amount payable under s 27 (ie \$9,000) [proposed s 27A].³⁰
7. This amendment is part of the Government's response to the May 2004 Report Serious Injury and Death in the Workplace of the Legislative Council's General Purpose Standing Committee No. 1 (the Standing Committee).
8. The Standing Committee recommended that the Government amend the 1987 Act to allow funeral expenses to be paid separately and directly by insurers in *all* cases, with or without a compensating discount to the lump sum payout or weekly benefit [Recommendation 36].³¹
9. These amendments extend to the death of a worker occurring on or after the date that the Bill was introduced into Parliament [proposed new Part 18I of Sch 6 to the 1987 Act].

Stop work orders

10. The Bill permits the WorkCover Authority (the Authority) or a person authorised by the Authority to issue a stop work order to an employer if the Authority or the person reasonably suspects that the employer does not have the required policy of insurance under the 1987 Act [proposed new s 163B]. This is a similar instrument to stop work notices for safe workplaces.
11. For the purposes of proposed new s 163B, an authorised officer has the same meaning as in s 238 of the 1998 Act, ie, an officer of the Authority authorised by the Authority for the purposes of the section [proposed s 163B(5)].
12. The order takes effect at the beginning of the fifth working day after the day on which it is given to the employer and the employer must (until the order is withdrawn) ensure that no work is performed [proposed new s 163B(2)].³²
13. Such an order must be withdrawn if the employer produces a certificate of currency in accordance with s 163A of the 1987 Act [proposed s 163B(3)].

³⁰ The Bill amends cl 7 of the *Workers Compensation Regulation 2003* as a consequence of the proposed amendments to the Workers Compensation Act 1987. This is a further recommendation of the *Serious injury and death in the workplace* Parliamentary Inquiry: Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

³¹ See General Purpose Standing Committee No. 1 *Serious Injury and Death in the Workplace*, May 2004, paragraphs 13.60 – 13.62. Previously, where workers had dependents, funeral expenses were paid out of the compensation those dependants received.

³² Failure to comply with an order is an offence (maximum penalty 500 penalty units (currently \$55,000) or imprisonment for 6 months, or both).

Workers Compensation and Other Legislation Amendment Bill 2004

14. The second reading speech states that:

the bill amends [the 1987 Act] to address the problem of non-insurance by employers. Uninsured employers place a huge burden on the scheme because they do not contribute insurance premiums. This leads to higher premiums for the employers who do the right thing.

... Employers who are insured need not be alarmed by these tough new powers because they can readily obtain a certificate of currency from an insurer as proof of insurance.³³

Other amendments

15. The Bill also provides that:

- the appointment of an approved medical specialist made before the commencement of proposed s 320(1A) of the 1998 Act cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal in certain circumstances [proposed new Part 18I[2] to the 1987 Act]; and
- proposed s 376(1)(a1) of the 1998 Act (see below) extends to guidelines issued before the commencement of that section [proposed new Part 18I[3]].

Workers' Compensation (Dust Diseases) Act 1942

16. The Bill amends the Dust Diseases Act to provide for the payment by the Workers' Compensation (Dust Diseases) Board of reasonable funeral expenses in the case of a worker who dies due to a dust disease [proposed amended s 8(2A)].

17. The amendment extends to the death of a person occurring on or after the date that the Bill is introduced into Parliament, but before the commencement of proposed s 8(2A) [proposed new Part 5 of Sch 2 to the Dust Diseases Act].

Workplace Injury Management and Workers Compensation Act 1998

18. The Bill amends the 1998 Act to provide that:

- the Workers Compensation and Workplace Occupational Health and Safety Council (the Council) may make recommendations to the President of the Workers Compensation Commission (the Commission) in relation to the appointment of approved medical specialists [proposed new s 320(1A)];
- guidelines issued by the Authority may specify professional or other requirements for medical practitioners to be permitted to assess the degree of permanent impairment of injured workers for the purposes of the 1987 Act or the 1998 Act [proposed s 376(1)(a1)];
- the Council may establish committees to which it may delegate its functions (other than the power of delegation) [proposed Sch 2 cl 15];³⁴ and
- Acting Deputy Presidents of the Commission may be appointed for up to 12 months [proposed Sch 5 cl 7A].³⁵

³³ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

³⁴ Committee members are protected from personal liability [proposed amended s 240]; and information may be disclosed to a committee: proposed amended s 243 of the 1998 Act.

Issues Considered by the Committee

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

Commencement: Clause 2(2)

19. Clause 2(2) provides that Sch 2 [3] commences on a day to be appointed by proclamation.
20. Schedule 2 [3] provides for the WorkCover Authority, or a person authorised by the Authority, to issue a stop work order to an employer if the Authority or the person reasonably suspects that the employer does not have the required policy of insurance under the 1987 Act [proposed new s 163B].
21. The Committee notes that providing for part of an Act to commence on a day or days to be proclaimed delegates to the Government the power to commence that part on a day it chooses after assent or not to commence the part of the Act, at all. However, there are often good reasons why such discretion is required.
22. The Committee is advised by the Minister's office that Sch 2 [3] is commencing on proclamation to allow time to inform employers and insurers as to the changes so as to ensure that the appropriate systems are in place when the provisions come into force.
23. The Minister's office anticipates that these processes should be completed within a matter of months.

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

Retrospectivity: Proposed amended s 27(a) and 27A of the 1987 Act & proposed s 8(2A) of the Workers' Compensation (Dust Diseases) Act 1942

24. The Bill amends the provisions in the above Acts relating to payment for the reasonable funeral expenses of workers.
25. These amendments extend to the death of a worker occurring on or after the date that the Bill was *introduced* into Parliament [proposed new Part 18I of Sch 6 to the 1987 Act and new Part 5 of Sch 2 to the Dust Diseases Act].
26. The payments under the Dust Diseases Act are to be made by the Workers' Compensation (Dust Diseases) Board from the Workers' Compensation Fund [proposed amended s 8(2A)].
27. However, the payments under the 1987 Act are to be made by employers, up to a maximum of \$9,000: the payment under proposed s 27(a) is an increase on the

³⁵ An Acting Deputy President has the functions of a Deputy President and anything done by an Acting Deputy President in the exercise of those functions has effect as if it had been done by a Deputy President. Consequential amendments also are made to the *Statutory and Other Officers Remuneration Act 1975* so that the Statutory and Other Officers Remuneration Tribunal may determine the rate of payment for the Acting Deputy Presidents.

existing liability under the 1987 Act; the payment required under s27A is a new liability.

28. The Senate Scrutiny of Bills Committee has held that legislation of this nature:

carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by the Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality. It places the Parliament in the invidious position of either agreeing to the legislation without significant amendment or bearing the odium of overturning the arrangements which many people may have made in reliance on the Ministerial announcement. Moreover, quite apart from the debilitating effect of the practice on the Parliament, it leaves the law in a state of uncertainty... The legislation when introduced may differ in significant details from the terms of the announcement. The Government may be unable to command a majority in the Senate to pass the legislation giving effect to the announcement or it may lose office before it has introduced the relevant legislation, leaving the new Government to decide whether to proceed with the proposed change to the law.³⁶

29. The Committee will always be concerned to identify where legislation is taken to have commenced on the date it was introduced into Parliament, rather than on or after the date of assent.

30. The Committee notes that the amendments retrospectively increase the liability of employers for funeral expenses from the date of the introduction of the Bill into Parliament.

31. Given that there are limited circumstances in which an employer could have relied on the absence of this increase in liability, the public notice of the intended change in the law through introduction of the Bill, the limited scope of the liability and the apparent fairness of an employer being liable for the funeral expenses of a work related death, the Committee does not consider that the retrospective nature of the provision unduly trespasses on personal rights and liberties.

Erosion of the Rule of law: proposed s 376(1)(a1) of the 1998 Act & new Part 18I[3] to the 1987 Act

32. Proposed s 376(1)(a1) of the 1998 Act provides that guidelines issued by the Authority may specify professional or other requirements for medical practitioners to be permitted to assess the degree of permanent impairment of injured workers for the purposes of the 1987 Act or the 1998 Act.

This amendment extends to guidelines issued before the commencement of proposed s 376(1)(a1) [proposed new Part 18I[3] to the 1987 Act].

33. To the extent that this provision prospectively validates guidelines previously issued, it does not raise any concerns for the Committee. However, if the provision operates to change the law prior to the commencement of the bill, it raises questions regarding retrospectively affecting persons in an adverse way.

³⁶ Senate Scrutiny of Bills Committee, *Annual Report 1986-87*, pp 12-13.

Workers Compensation and Other Legislation Amendment Bill 2004

34. Currently the guidelines provide that an assessor is to be a registered medical practitioner with qualifications in the relevant medical specialty who has undertaken the requisite training in use of the WorkCover guides. Assessors may be one of the claimant's treating practitioners, or an assessor engaged on behalf of the employer or insurer to conduct an assessment for the purposes of assessing the level of permanent impairment.³⁷
35. The amendment is in response to the recent NSW Supreme Court decision of Justice Bell in *Thomson v WorkCover*.³⁸ Mr Thompson was a highly qualified practitioner who challenged WorkCover's ability to exclude him from assessing permanent impairment under s 376(1)(a) of the 1987 Act.
36. In her decision Justice Bell found that the WorkCover *Guides for the Evaluation of Permanent Impairment* were beyond power to the extent to which they purported to impose a requirement that a registered medical practitioner who has undertaken training in the use of the WorkCover Guides is not entitled to carry out assessments of permanent impairment under the Workers Compensation Acts, unless he or she has "qualifications in the relevant medical speciality".³⁹

The Rule of Law

37. The Committee has previously noted that in a constitutional democracy, citizens are entitled to expect that all arms of government will act in accordance with the separation of powers, and the Rule of Law.⁴⁰
38. The Rule of Law embodies a set of principles for "legal restraint and fairness in the use of government power".⁴¹

The Universal Declaration of Human Rights expressly recognises the relationship between the Rule of Law and the protection of human rights.

The Rule of Law is also implicit in the Australian Constitution.⁴²

39. The specific aspects of the Rule of Law with which the Bill is arguably inconsistent are:
- legislation should not be retroactive;
 - legal rules should be "sufficiently stable to allow people to be guided by their knowledge of the content of the rules"; and

³⁷ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

³⁸ 30 June 2004 [2004] NSWSC 282.

³⁹ The *Guidelines* were issued by WorkCover in consultation with the permanent impairment co-ordinating group, which consisted of representatives from the specialist medical colleges as required by s 377 of the Act, as well as Labor Council representatives. Any future changes to the permanent impairment guidelines will be developed in consultation with the WorkCover Advisory Council: Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

⁴⁰ The Committee previously discussed these issues in its consideration of the *Clyde Waste Transfer Terminal (Special Provisions) Act 2003*. See *Legislation Review Digest*, No. 7 of 2003.

⁴¹ G de Q Walker, *The Rule of Law* (1988), p 3.

⁴² *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.

Workers Compensation and Other Legislation Amendment Bill 2004

- government decisions in specific situations should be guided by applicable legal rules that are relatively general, stable and prospective.⁴³

40. It was stated in the second reading speech that:

given that the Government intended that the guidelines provide for who may undertake permanent impairment assessments the bill will ensure that existing guidelines issued in 2002 are valid. I can assure the Legislation Review Committee specifically that this retrospective validation is necessary not only because it implements the Government's policy but also because it ensures that the system in place since 2002 is not [un]duly disrupted on technical grounds. The bill continues the program of reform and improvement to the workers compensation scheme in the interests of workers, employers and the broader community.⁴⁴

- | |
|--|
| <p>41. The Committee is of the view that certainty, consistency and stability in law are vital elements of the rule of law, which is essential for the maintenance of personal rights and liberties.</p> <p>42. The Committee recognises the public interest in having an effective system for assessing permanent impairment as an integral component of the State's legislative scheme for workers compensation.</p> <p>43. The Committee understands that the WorkCover Guidelines have been generally accepted and operating since 2002.</p> <p>44. The Committee acknowledges the explanation of the Parliamentary Secretary that this retrospective validation is required to ensure that an effective system is not unduly disrupted on technical grounds.</p> <p>45. Having regard to the above matters, the Committee does not consider that this instance of retrospectivity unduly trespasses on personal rights and liberties.</p> |
|--|

The Committee makes no further comment on this Bill.

⁴³ See J Finnis, *Natural Law and Natural Rights* (1980) pp 270-271.

⁴⁴ Mr A P Stewart MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 19 November 2004.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

8. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (PAROLE) BILL 2004

Date Introduced:	26 October 2004
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Hatzistergos MLC
Portfolio:	Justice

Background

1. The Committee reported on the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004* in Legislation Review Digests No 15 and 16 of 2004.
2. Under proposed s 193A(2) of the Bill, victims of a serious offender are entitled to be given access to all documents held by or on behalf of the Parole Authority in relation to the offender, except certain documents listed in s 194.
3. The Committee was concerned that under the legislation the Parole Authority would not be required to consider the serious offender's right to privacy before deciding which information to disclose to victims and wrote to the Minister to seek his advice on what measures would be taken to minimise the impact on a serious offender's right to privacy while achieving the objects of the Bill.
4. The Minister replied to the Committee, by letter dated 9 November 2004, that:

[n]ew section 185A of the Bill provides for the Parole Authority, in consultation with the Minister, to establish guidelines in relation to the exercise of the Parole Authority's functions. I will ask the Chairperson of the Parole Authority to ensure that the issue of privacy is addressed in the guidelines. It is reasonable to anticipate that the guidelines will address such matters as: information relating to third parties; and information solely relating to a serious offender's personal and business affairs.
5. The Committee noted that section 193A of the Bill does not provide the Authority with a discretion not to give a victim access to its documents other than in respect of the exceptions set out s 194 as amended by the Bill.
6. Further, it was not apparent to the Committee that the types of information the Minister suggested in his letter fell within these exceptions. For this reason, the Committee was concerned that any guidelines the Authority may make under section 185A in relation to taking into account the privacy rights of serious offenders or third parties prior to giving a victim access to its documents may be inconsistent with the Act.

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004

7. The Committee therefore wrote again to the Minister (letter dated 16 November 2004, below) to seek confirmation that the exceptions provided in section 194 to the presumption of disclosure to victims provided for in section 193A allow consideration of the need to minimise any unnecessary impact on privacy.

Minister's Reply

8. The Minister responded to the Committee's letter of 16 November 2004, by letter dated 19 November 2004 (below).
9. The Minister replied that:

Existing section 194(d) of the *Crimes (Administration of Sentences) Act 1999* provides that nothing in the Act or regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of a judicial member, prejudice the public interest.

Privacy is a public interest consideration.

The exceptions provided in section 194 to the presumption for the disclosure of information to victims, provided for in section 193A(2), therefore allow consideration of the need to minimise any unnecessary impact on privacy.

When considering a victim's request for documents under proposed section 193A(2), a judicial member of the State Parole Authority will, from time to time, need to make a judgement concerning the public interest in the disclosure of information contained in a document and the public interest in the protection of the right to privacy. The judgement will need to be based on an objective evaluation of all of the relevant circumstances.

Committee's Response

- | |
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| 10. The Committee thanks the Minister for his reply. |
|--|

The Committee makes no further comment on this Bill.



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

16 November 2004

Our Ref:LRC1023

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

Dear Minister

Crimes (Administration of Sentences) Amendment (Parole) Bill 2004

The Committee thanks you for your reply of 9 November 2004 to its letter in relation to this Bill. The Committee has considered your response and has resolved to write again to you for further clarification on the matter of protecting the privacy of serious offenders and third parties.

It appears to the Committee that sections 193A and 194 do not provide the Authority with discretion not to give a victim access to its documents other than in respect of the exceptions set out in s 194 as amended by this Bill.

Further, it is not apparent to the Committee that the types of information that you suggested in your letter ought not to be disclosed would fall within these exceptions. For this reason, the Committee is concerned any guidelines the Authority may make under section 185A in relation to taking into account the privacy rights of serious offenders or third parties prior to giving a victim access to its documents may be inconsistent with the Act.

The Committee has received advice from your Office that the guidelines you propose can be made and will be consistent with the Act because one of the current exceptions provided by section 194, namely "prejudice the public interest", would include consideration by the Authority of the privacy rights of an offender, or third party, when deciding whether a victim can access a particular document.

In addition, your Office advised the Committee that the proposed additional exception relating to the disclosure of the contents of any offender's medical, psychiatric or

psychological report provides substantial protection for the privacy rights of the offender concerned.

The Committee remains concerned to ensure that the guidelines you have proposed would be consistent with the Act. Therefore, the Committee seeks your confirmation that the exceptions provided in section 194 (as amended) to the presumption of disclosure to victims provided for in section 193A allow consideration of the need to minimise any unnecessary impact on privacy.

Yours sincerely

A handwritten signature in black ink that reads "Peter Primrose". The signature is written in a cursive style with a large initial 'P'.

Peter Primrose MP
Chairman



New South Wales
Minister for Justice

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

19 NOV 2004

Dear Chair

I refer to your letter dated 16 November 2004 concerning the *Crimes (Administration of Sentences) Amendment (Parole) Bill 2004*.

Existing section 194(d) of the *Crimes (Administration of Sentences) Act 1999* provides that nothing in the Act or regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of a judicial member, prejudice the public interest.

Privacy is a public interest consideration.

The exceptions provided in section 194 to the presumption for the disclosure of information to victims, provided for in section 193A(2), therefore allow consideration of the need to minimise any unnecessary impact on privacy.

When considering a victim's request for documents under proposed section 193A(2), a judicial member of the State Parole Authority will, from time to time, need to make a judgement concerning the public interest in the disclosure of information contained in a document and the public interest in the protection of the right to privacy. The judgement will need to be based on an objective evaluation of all of the relevant circumstances.

I restate my earlier advice that I will ask the Chairperson of the State Parole Authority to ensure that the issue of privacy is addressed in the guidelines drafted in accordance with proposed section 185A. The proposed guidelines are an appropriate vehicle through which to ensure judicial member awareness, and consistency of approach, in respect of privacy considerations. The guidelines will assist the judicial members of the State Parole Authority in their deliberations in respect of section 194(d).

Yours faithfully

Handwritten signature of John Hatzistergos in black ink.
(John Hatzistergos)

GPO BOX 5341 SYDNEY NSW 2001

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Architects Regulation 2004	25/06/04	4388	21/09/04	
Centennial Park and Moore Park Trust Regulation	27/08/04	6699	05/11/04	
Environmental Planning and Assessment Amendment (ARTC Rail Infrastructure) Regulation 2004	03/09/04	7343	26/10/04	
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	07/11/03	10369	05/03/04 30/04/04	01/04/04
Forestry Regulation 2004	27/08/04	6778	26/10/04	
Inclosed Lands Protection Regulation 2002	06/12/02	10370	29/05/03 12/09/03	29/08/03 11/03/04
Passenger Transport (Drug and Alcohol Testing) Regulation 2004	05/03/04	957	30/04/04	
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	17/10/03	10045	13/02/04	15/06/04
Stock Diseases (General) Regulation 2004	02/07/04	5531	05/11/04	
Sydney Olympic Park Amendment Regulation 2004	30/07/04	6173	05/11/04	
Wild Dog Destruction Regulation 2004	27/08/04	7133	26/10/04	

SECTION B: COPIES OF CORRESPONDENCE ON REGULATIONS

Regulation & Correspondence	Gazette ref
<p>Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004</p> <ul style="list-style-type: none"> • Letter dated 05/11/04 to the Minister for Justice • Letter dated 02/12/2004 from the Minister for Justice 	<p>30/07/04; page 6119</p>
<p>Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004</p> <ul style="list-style-type: none"> • Letter dated 21/09/2004 to the Minister for Infrastructure and Planning • Letter dated 22/11/2004 from the Minister for Infrastructure and Planning 	<p>25/06/2004; page 4486.</p>
<p>Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003</p> <ul style="list-style-type: none"> • Letter dated 21/09/2004 to the Minister for Roads • Letter dated 18/11/2004 from the Parliamentary Secretary for Roads <p>Previous correspondence on this Regulation is available in <i>Digests</i> 1 and 8 of 2004 and online.</p>	<p>29/08/2003; page 8610.</p>

1. Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

5 November 2004

Our Ref: LRC 889

The Hon J Hatzistergos MLC
Minister for Justice
Room 802
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Minister

Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004

On 5 November 2004, the Committee considered the above Regulation, which provides for the testing of members of correctional staff for alcohol and prohibited drugs.

The Committee resolved to write to you about the following matters.

The absence of any criteria for the appointment of "authorised persons"

The Committee notes that "authorised persons" appointed pursuant to cl 249B of the Regulation have significant discretion in relation to matters that may affect the rights and liberties of members of correctional staff.

For example, authorised persons may determine which members of correctional staff may be tested. They are not restrained by a requirement to have a reasonable suspicion that a staff member has recently consumed alcohol or used a prohibited drug.

Authorised persons also have discretion in relation to the choice of non-invasive testing techniques and in determining whether a test should occur if it would be dangerous to a staff member's medical condition.

The Committee seeks your advice on why there are no requirements in the Regulation regarding the necessary rank, qualifications or attributes of persons who may be authorised pursuant to cl 249B.

The absence of any provision for the confidentiality of test results

The Committee notes that the Regulation lacks any provision protecting the confidentiality of test results. Section 2361(m) of the *Crimes (Administration of Sentences) Act 1999* provides for regulations to cover this subject matter.

The Committee further notes that, in contrast, the confidentiality of the results of members of the NSW Police Service tested under s 211A of the *Police Act 1990* is protected in cl 49(6) of the *Police Regulation 2000*.

The Committee seeks your advice as to the rationale for excluding a provision protecting the confidentiality of test results.

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

RECEIVED

- 2 DEC 2004

LEGISLATION REVIEW
COMMITTEE

Dear Mr Primrose

Re: *Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004.*

I refer to your letter of 5 November 2004.

The Department of Corrective Services advises me that the drafting of the above Regulation (the Correctional Staff Regulation) was carried out so that its provisions were consistent with Part 5 of the *Police Regulation 2000* and the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* (the Rail Safety Regulation).

The drafting process also took into account the Department's *Employee Alcohol and Other Drugs Policy*.

Criteria for authorised persons

Clause 249B of the Correctional Staff Regulation was based on clause 60 of the *Police Regulation 2000* and clause 4 of the Rail Safety Regulation – neither of which stipulate criteria governing the appointment of authorised persons (called authorised officers in the Rail Safety Regulation).

In all cases, the appointment of authorised persons/officers is at the discretion of the appointing person or body. Nevertheless, each Regulation refers to "the holder of a particular office" which implies that authorised persons will be expected to occupy positions of significant responsibility.

The Department of Corrective Services *Employee Alcohol and Other Drugs Policy* provides for the ranks/grades of authorised persons in section 14. A copy of this Policy is attached for the Committee's information, together with a list of authorised persons appointed by the Commissioner (required by clause 249B(5) of the Correctional Staff Regulation).

Confidentiality of test results

The Rail Safety Regulation does not provide for confidentiality of test results, so in this respect the Correctional Staff Regulation is consistent with most recent legislation.

GPO BOX 5341 SYDNEY NSW 2001

Additionally, section 257 of the *Crimes (Administration of Sentences) Act 1999* provides criminal sanctions against the unauthorised disclosure of “any information obtained in connection with the administration and execution of this Act”. Test results clearly fall within the parameters of this section.

Section 11 of the Department’s *Employee Alcohol and Other Drugs Policy* also covers confidentiality of test results, and includes the provision that “breaches of confidentiality will be viewed seriously and may result in disciplinary action in appropriate cases.”

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Hatzistergos', with a stylized, cursive script.

(John Hatzistergos)

2. Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

21 September 2004

File ref: LRC806

The Hon Craig Knowles MP
Minister for Infrastructure and Planning
Level 33 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister

Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004

The Committee has recently considered the above Regulation under s 9 of the *Legislation Review Act 1987*.

In considering the Regulation, the Committee has been cognisant of the Legislative Assembly's Standing Committee on Public Works' recent *Inquiry into Energy Consumption in Residential Buildings*.

The Committee seeks your response to a number of issues raised in the industry joint submission of November 2003 to the Inquiry, namely that:

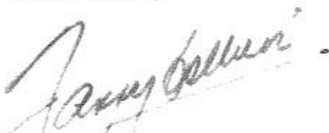
- development of national sustainability regulations through the Building Code of Australia should be supported and assistance given to incorporate the BASIX model into the BCA;
- abandoning a uniform national building code may fragment the system, with major cost implications for industry;
- BASIX adds a further burden to an already overburdened Development Application process;
- the proposed BASIX implementation timetable does not allow adequate time for its development or validation, or the necessary training and adjustment required either by industry or councils;
- BASIX undermines existing policies rather than building on them; and
- inadequate BASIX information and consultation process by the Department of Infrastructure, Planning and Natural Resources.

The Committee is also concerned that difficulties in navigating the BASIX online system may discourage its use by the general public, thereby undermining the aims of

the Regulation. The Committee requests your advice as to what your Department is being done to ensure that a "user friendly" online application system.

The Committee also notes the absence of any monitoring and evaluation system in the Regulation and seeks your advice as to what is being done in this regard.

Yours sincerely



BARRY COLLIER MP
CHAIRPERSON



MINISTER FOR INFRASTRUCTURE AND PLANNING
MINISTER FOR NATURAL RESOURCES

23 NOV 2004

Mr Barry Collier MP
Chairperson, Legislation Review Committee
Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

D04/6024
LRC806



Dear Mr Collier

I refer to your letter on behalf of the Legislation Review Committee in relation to the Committee's consideration of the *Environmental Planning and Assessment Amendment Regulation (Building Sustainability Index: BASIX) Regulation 2004*.

I note your reference to the Standing Committee on Public Works' *Inquiry into Energy Consumption in Residential Buildings*. The Department of Infrastructure, Planning and Natural Resources (DIPNR) provided a formal submission to the Inquiry as well as witnesses for the Public Hearings, to improve the Committee's understanding of these important matters and ensure my portfolio can better deliver co-ordinated and sustainable outcomes.

In relation to the joint industry submission of November 2003, upon which you are seeking my response, please note the Department has previously responded to the Standing Committee on Public Works on the submission and other matters.

I am pleased to provide the following response to the issues you have raised:

- I support the principle of national standards. However, it requires a considered approach. In this regard, my Department has already commenced discussions with other States on a national roll-out of BASIX. The sustainability measures under BASIX are best delivered under the planning framework and I consider this to be an opportunity for an innovative national approach. The Building Code of Australia (BCA) is not the sole mechanism to deliver national standards, including the sustainability measures for residential buildings under BASIX.
- As I support the principle of national standards, as mentioned above, this approach has not been abandoned. DIPNR has already commenced discussions with other States on BASIX being rolled-out as a national standard. I reiterate, however, that the BCA is not the most appropriate framework or mechanism to deliver the sustainability measures under BASIX, nor is it the sole mechanism to ensure a national approach. As you would appreciate, implementation mechanisms must be fit for purpose and important sustainability policies such as BASIX should not be limited in this regard. Any BASIX roll-out will include consultation with industry to ensure its implementation is effective.

With regard to the BCA, please note that the NSW Government is a signatory to the Inter-Government Agreement on the BCA, DIPNR is on the Australian Building Codes Board and dedicates significant resources and expertise to several of its committees. The BCA already allows for State variations when options for national uniformity have been exhausted or an issue is specific or unique to a particular State or Territory.

- BASIX streamlines the development approval process. It is applied as standard across local government areas and replaces a significant number of local council Development Control Plans with numerous and conflicting objectives. I have received positive feedback from industry and local government in this regard since the Premier and I launched BASIX for new single dwellings and dual occupancies in Sydney on 1 July 2004.

The NSW planning system reforms I announced on 30 September 2004 will also ensure a more streamlined, modern and relevant planning system that will be more user-friendly for individuals, business, local government and NSW Government agencies.

- DIPNR's implementation of BASIX continues to provide industry and local government with appropriate information and timing to prepare for its implementation. This included the phasing of implementation between single dwelling/dual occupancies in Sydney from 1 July 2004 and multi-unit developments in Sydney from February 2005. BASIX will then apply to other parts of the State from 1 July 2005. DIPNR continues to provide tailored briefings and training sessions to local government and industry on the scheme and the BASIX web-tool.

I've received positive feedback from industry and local government on BASIX and DIPNR's partnership approach since its commencement.

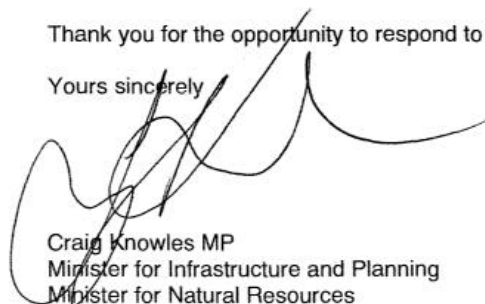
- BASIX builds on existing policies. Most importantly, BASIX ensures on-the-ground sustainable outcomes and DIPNR has worked closely with industry and local government to ensure its effective implementation. It is worth noting that, unlike previous policies, BASIX is integrated (greenhouse and water) and provides flexibility for industry to achieve compliance. BASIX is also free and online for anyone to access. Its electronic delivery enables the Government to better respond to new and innovative sustainable technologies. Ultimately, this provides industry with more options to ensure the least cost of compliance and provides certainty for new sustainable industries.
- DIPNR continues to work closely with industry and local government to ensure the effective implementation of the BASIX scheme. DIPNR has provided ongoing briefing and training sessions as well as a 1300 number helpline and printed information in Sydney's 14 most common non-English languages.

In relation to the Committee's other concerns, I advise that the BASIX tool is user-friendly for its purpose and, as I mentioned above, DIPNR continues to provide training sessions and a helpline facility for anyone who wants to improve their understanding of the assessment tool. There is also an online demonstration which provides an overview of how the BASIX tool works. This approach ensures the aims of the BASIX scheme are delivered effectively.

Finally, I advise that DIPNR's implementation program includes a monitoring and evaluation protocol regarding the performance of BASIX to ensure its continual improvement. As an example, DIPNR held a local government workshop on 9 September 2004 to review the first 2 months of its implementation. This feedback has already been translated into improvements to the BASIX tool and advice to industry and local councils on effective implementation.

Thank you for the opportunity to respond to the Committee on these matters.

Yours sincerely



Craig Knowles MP
Minister for Infrastructure and Planning
Minister for Natural Resources

3. Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003



PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

19 October 2004

Our Ref: LRC382
Your Ref: M04/4802

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

Dear Minister

Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

The Committee thanks you for your letter of 17 September 2004 regarding the Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003.

At its meeting on 19 October 2004, the Committee considered your letter. It resolved to write to express its support for the consideration by the Road and Traffic Authority (RTA) of an amendment to clause 25B of the Regulation to specify the persons who may receive personal information about participants in the Interlock Driver Licence Program.

The Committee would be pleased to be notified of the outcome of the RTA's review.

Yours sincerely

A handwritten signature in black ink that reads 'Marianne Saliba'.

Marianne Saliba MP
Vice Chair

M04/8669



*Minister for Roads
Minister for Housing
Leader of the House*

Ms Marianne Saliba MP
Vice Chair
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

18 NOV 2004

Dear Ms *Marianne* Saliba

I refer to your letter (Ref: LRC382) to the Hon Carl Scully MP, Minister for Roads regarding Clause 25B of the *Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003*. The Minister has asked me to reply on his behalf.

The Roads and Traffic Authority (RTA) is amending clause 25B of the Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003 to specify the class of person to whom information must be provided in order for the RTA to fulfil its requirements for the Alcohol Interlock Program.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Stewart'.

TONY STEWART MP
Parliamentary Secretary for Roads

Appendix 1: Index of Bills Reported on in 2004

	Digest Number
Aboriginal Land Rights (Gandangara Estate) Bill 2004	12
Administrative Decisions Tribunal Amendment Bill 2004	11
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004	10
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	2
Anti-Discrimination Amendment (Miscellaneous Provisions) Bill 2004	12
Appropriation Bill 2004	10
Appropriation (Budget Variations) Bill 2004	5
Appropriation (Parliament) Bill 2004	10
Appropriation (Special Offices) Bill 2004	10
Bail Amendment (Terrorism) Bill 2004	9
Botany Bay National Park (Helicopter Base Relocation) Bill 2004	5
Child Protection (Offenders Prohibition Orders) Bill 2004	9
Child Protection (Offender Registration) Bill 2004	10,13
Children (Detention Centres) Amendment Bill 2004	4
Civil Liability Amendment (Offender Damages) Bill 2004	5,7
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	12,13
Commercial Agents and Private Inquiry Agents Bill 2004	9,10
Community Protection (Closure of Illegal Brothels) Bill 2003*	1
Compulsory Drug Treatment Correctional Centre Bill 2004	8
Constitutional Amendment (Pledge of Loyalty) Bill 2004*	7
Courts Legislation Amendment Bill 2004	7
Crimes Amendment (Child Neglect) Bill 2004	7
Crimes Amendment (Child Pornography) Bill 2004	16
Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004*	15
Crimes Legislation Amendment Bill 2004	3
Crimes Legislation Amendment (Terrorism) Bill 2004	10
Crimes (Administration of Sentences) Bill 2004	9
Crimes (Administration Of Sentences) Amendment (Norfolk Island Prisoners) Bill 2004	13
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	15,16, 17
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004	9
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003	1

	Digest Number
Criminal Procedure (Sexual Offence Evidence) Bill 2004	8
Cross-Border Commission Bill 2004	3
Crown Lands Legislation Amendment (Budget) Bill 2004	10
Crown Lands (Prevention of Sales) Bill 2004*	10
Duties Amendment (Land Rich) Bill 2004	16
Education Amendment (Non-Government Schools Registration) Bill 2004	2
Electricity (Consumer Safety) Bill 2003	1,2
Fair Trading Amendment Bill 2004	4
Filming Approval Bill 2004	7,8
Fines Amendment Bill 2004	9
Fisheries Management Amendment Bill 2004	6
Food Legislation Amendment Bill 2004	3
Forestry (Darling Mills State Forest Revocation) Bill 2004	16
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	2
Gaming Machines Amendment Bill 2004	16
Gene Technology (GM Crop Moratorium) Amendment Bill 2004	15
Government School Assets Register Bill 2004*	16
Greyhound and Harness Racing Administration Bill 2004	7,9
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	6
Health Legislation Amendment Bill 2004	6
Health Legislation Amendment (Complaints) Bill 2004	15
Health Legislation Further Amendment Bill 2004	13
Health Registration Legislation Amendment Bill 2004	15
Health Services Amendment Bill 2004	15
Historic Houses Amendment Bill 2004	14
Home Building Amendment Bill 2004	16
Institute of Teachers Bill 2004	8
Jury Amendment Bill 2004	15
Jury Amendment (Majority Verdicts) Bill 2004*	14
Juvenile Offenders Legislation Amendment Bill 2004	17
Legal Profession Amendment Bill 2004	9
Legal Profession Legislation Amendment (Advertising) Bill 2003	1
Licensing and Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	17
Liquor Amendment (Parliament House) Bill 2004	6
Liquor Amendment (Parliamentary Precincts) Bill 2004	8

	Digest Number
Liquor Amendment (Racing Clubs) Bill 2004	9
Local Government Amendment (Council and Employee Security) Bill 2004	5
Local Government Amendment (Discipline) Bill 2004	9
Local Government Amendment (Mayoral Elections) Bill 2004	9
Local Government Amendment (Public-Private Partnerships) Bill 2004	17
Lord Howe Island Amendment Bill 2003	10
Mine Health and Safety Bill 2004	8,9
Mining Amendment (Cyanide Leaching) Bill 2004*	14
Mining Amendment (Miscellaneous Provisions) Bill 2004	6,8
National Competition Policy Amendment (Commonwealth Financial Penalties) Bill 2004	2
National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004	7
National Competition Policy Liquor Amendment (Commonwealth Financial Penalties) Bill 2004	7
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	9
NSW Self Insurance Corporation Bill 2004	17
Noxious Weeds Amendment Bill 2004	16
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	15
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	1
Parliamentary Electorates and Elections Amendment (Prohibition on Voting by Criminals) Bill 2004*	5
Partnership Amendment (Venture Capital Funds) Bill 2004	3
Passenger Transport Amendment (Bus Reform) Bill 2004	8,9
Police Amendment (Crime Reduction and Reporting) Bill 2004	3
Police Amendment (Senior Executive Transfers) Bill 2004	9,10
Police Integrity Commission Amendment Bill 2004	12
Prevention of Cruelty to Animals Amendment Bill 2004	16
Prevention of Cruelty to Animals (Tail Docking) Bill 2004	4,6
Professional Standards Amendment Bill 2004	11
Protected Estates Amendment (Missing Persons) Bill 2004	14
Public Lands Protection Bill 2004*	13
Public Lotteries Legislation Amendment Bill 2004	2
Redfern-Waterloo Authority Bill 2004	16
Regional Development Bill 2004	7
Registered Clubs Legislation Amendment Bill 2004	11
Residential Tenancies (Public Housing) Bill 2004	9

	Digest Number
Retail Leases Amendment Bill 2004	10
Retirement Villages Amendment Bill 2004	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	1
Road Transport (General) Amendment (Licence Suspension) Bill 2004	9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	1,7
Rookwood Necropolis Amendment Bill 2004	17
Rural Communities Impacts Bill 2004*	11
Save Orange Grove Bill 2004*	11
Shops and Industries Amendment (Special Shop Closures) Bill 2004	16
Smoke-free Environment Amendment Bill 2004	15
Snowy Mountains Cloud Seeding Trial Bill 2004	5
Special Commission of Inquiry (James Hardie Records) Bill 2004	15
State Records Amendment Bill 2004	13,15
State Revenue Legislation Amendment Bill 2004	7
State Revenue Legislation Further Amendment Bill 2004	10
State Water Corporation Bill 2004	8
Statute Law (Miscellaneous Provisions) Bill 2004	9
Statute Law (Miscellaneous Provisions) Bill (No 2) 2004	17
Stock Diseases Amendment (Artificial Breeding) Bill 2004	6,8
Stock Diseases Amendment (False Information) Bill 2004	4,9
Stock Medicines Amendment Bill 2004	12,15
Strata Schemes Management Amendment Bill 2003	1,3
Superannuation Administration Amendment Bill 2003	1
Superannuation Legislation Amendment Bill 2004	16
Sustainable Energy Development Repeal Bill 2004	10
Sydney Opera House Trust Amendment Bill 2004	10
Teaching Services Amendment Bill 2004	15
The Synod of Eastern Australia Property Amendment Bill 2004	2
Thoroughbred Racing Legislation Amendment Bill 2004	4,6
Threatened Species Legislation Amendment Bill 2004	11,13
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	6
University Legislation Amendment Bill 2004	15
Water Management Amendment Bill 2004	8,14
Wilderness Amendment Bill 2004*	16

	Digest Number
Wool, Hide and Skin Dealers Bill 2004	2
Workers Compensation and Other Legislation Amendment Bill 2004	17
Workers Compensation Legislation Amendment Bill 2004	9

Appendix 2: Index of Ministerial Correspondence on Bills in 2004

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Child Protection (Offender Registration) Bill 2004	Minister for Police	27/08/04	20/09/04		10,13
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004	Attorney General	21/09/04	28/09/04		12,13
Civil Liability Amendment Bill 2003	Minister for Health	28/11/03	22/12/03	7	1
Civil Liability Amendment (Offender Damages) Bill 2004	Minister for Justice	26/03/04	13/04/04		5,7
Commercial Agents and Private Inquiry Agents Bill 2004	Minister for Police	18/06/04	29/07/04		9,10
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	Minister for Justice	05/11/04 16/11/04	09/11/04 19/11/04		15,16 17
Crimes Legislation Further Amendment Bill 2003	Attorney General	28/11/03	16/12/03	7	1
Electricity (Consumer Safety) Bill 2003	Minister for Fair Trading	13/02/04	18/02/04		1,2
Environmental Planning and Assessment (Development Consents) Bill 2003	Minister for Infrastructure and Planning	24/10/03	19/03/04	4	5
Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	28/11/03	19/03/04	7	5
Environmental Planning and Assessment (Quality of Construction) Bill 2003	Minister for Infrastructure, Planning and Natural Resources	18/11/03	19/03/04	6	5
Filming Approval Bill 2004	Minister for the Environment	11/05/04	12/05/04		7,8
Greyhound and Harness Racing Administration Bill 2004	Minister for Gaming and Racing	11/05/04	31/05/04		7,9
Lord Howe Island Amendment Bill 2003	Attorney General/ Premier	13/02/04	Premier 13/07/04		1,10 ⁴⁵
Legal Profession Legislation Amendment (Advertising) Bill 2003	Attorney General	13/02/04	23/03/04		1,5
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004	Minister for Commerce	03/12/04			17
Mine Health and Safety Bill 2004	Minister for Mineral Resources	28/05/04	09/06/04		8,9

⁴⁵ Published under the title "Commencement of Acts."

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Mining Amendment (Miscellaneous Provisions) Bill 2004	Minister for Mineral Resources	30/04/04	17/05/04		6,8
Motor Accidents Legislation Amendment Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1
National Parks and Wildlife Amendment (Kosciuszko National Park Roads) Bill 2003	Minister for the Environment	07/11/03	08/12/03	5	1
Partnership Amendment (Venture Capital Funds) Bill 2004	Attorney General	05/03/04	23/03/04		3,5
Passenger Transport Amendment (Bus Reform) Bill 2004	Minister for Transport Services	28/05/04 18/06/04	17/06/04		8,9
Police Amendment (Senior Executive Transfers) Bill 2004	Minister for Police	18/06/04	21/07/04		9,10
Police Legislation Amendment (Civil Liability) Bill 2003	Minister for Police	18/11/03	24/12/03	6	1
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	05/04/04		4,6
Privacy and Personal Information Protection Amendment Bill 2003	Attorney General	24/10/03	25/02/04	4	3
Registered Clubs Amendment Bill 2003	Minister for Gaming and Racing	28/11/03	25/02/04	7	3
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	Minister for Roads	13/02/04	23/03/04		1,5
Road Transport (General) Amendment (Licence Suspension) Bill 2004	Minister for Roads	18/06/04			9
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003	Minister for Roads	13/02/04	05/05/04		1,7
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/04			15
State Records Amendment Bill 2004	Premier	19/10/04	28/10/04		13,15
State Revenue Legislation Further Amendment Bill 2003	Treasurer	28/11/03	15/12/03	7	1
Stock Diseases Amendment (Artificial Breeding) Bill 2004	Minister for Agriculture and Fisheries	30/04/04	21/05/04		6,8
Stock Diseases Amendment (False Information) Bill 2004	Minister for Agriculture and Fisheries	16/03/04	28/05/04		4,9
Stock Medicines Amendment Bill 2004	Minister for Primary Industries	21/09/04	27/10/04		12,15
Strata Schemes Management Amendment Bill 2003	Minister for Fair Trading	13/02/04	27/02/04		1,3
Superannuation Administration Amendment Bill 2003	Treasurer	13/02/04	18/03/04		1,5

Bill	Minister/Member	Letter sent	Reply	Digests 2003	Digest 2004
Thoroughbred Racing Legislation Amendment Bill 2004	Minister for Gaming Racing	16/03/04	07/04/04		4,6
Threatened Species Legislation Amendment Bill 2004	Minister for the Environment	27/08/04	24/09/04		11,13
Water Management Amendment Bill 2004	Minister for Natural Resources	28/05/04 26/10/04	24/09/04		8,14
Workers Compensation Amendment (Insurance Reforms) Bill 2003	Minister for Commerce	18/11/03	05/01/04	6	1

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2004

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Aboriginal Land Rights (Gandangara Estate) Bill 2004	N				
Administrative Decisions Tribunal Amendment Bill 2004				N	
Agricultural Livestock (Disease Control Funding) Amendment Bill 2004				N	
Animal Diseases Legislation Amendment (Civil Liability) Bill 2004	N				
Anti Discrimination Amendment (Miscellaneous Provisions) Bill 2004	N			N	
Bail Amendment (Terrorism) Act 2004	N				
Botany Bay National Park (Helicopter Base Relocation) Bill 2004				N	
Child Protection (Offenders Prohibition Orders) Bill 2004	N			C	
Child Protection (Offenders Registration) Bill 2004	N,C			C	
Classification (Publications, Films and Computer Games) Enforcement Amendment (Uniform Classification) Bill 2004				C	
Civil Liability Amendment (Offender Damages) Bill 2004	R			C	
Commercial Agents and Private Inquiry Agents Bill 2004	R			C	
Community Protection (Closure of Illegal Brothels) Bill 2003	R				
Compulsory Drug Treatment Correctional Centre Bill 2004	N			N	
Courts Legislation Amendment Bill 2004				N	
Crimes Amendment (Child Neglect) Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Crimes Amendment (Child Pornography) Bill 2004				N	
Crimes Legislation Amendment (Terrorism) Bill 2004	N				
Crimes (Administration of Sentences) Bill 2004	N			N	
Crimes (Administration of Sentences) Amendment (Parole) Bill 2004	N,C,R			N	
Crimes (Interstate Transfer of Community Based Sentences) Bill 2004				N	
Crimes (Sentencing Procedure) Amendment (Victims Impact Statements) Bill 2003				N	
Criminal Procedure (Sexual Offence Evidence) Bill 2004	N				
Crown Lands (Prevention of Sales) Bill 2004*	N, R				
Duties Amendment (Land Rich) Bill 2004	N, R				
Education Amendment (Non-Government Schools Registration) Bill 2004				N	
Electricity (Consumer Safety) Bill 2003	N, R				C
Fair Trading Amendment Bill 2004				N	
Filming Approval Bill 2004				C	
Fines Amendment Bill 2004				N	
Fisheries Management Amendment Bill 2004				N	
Food Legislation Amendment Bill 2004				N	
Forestry (Darling Mills State Forest Revocation) Bill 2004				N	
Freedom of Information Amendment (Terrorism and Criminal Intelligence) Bill 2004	N			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Gaming Machines Amendment Bill 2004				N	
Greyhound and Harness Racing Administration Bill 2004			R, C	N	
Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004	N		R		
Health Legislation Amendment Bill 2004	N			N	
Health Legislation Amendment (Complaints) Bill 2004	N,R			N	
Health Legislation Further Amendment Bill 2004				N	
Health Services Amendment Bill 2004				N	
Historic Houses Amendment Bill 2004				N	
Health Registration Legislation Amendment Bill 2004	N,R			N	
Home Building Amendment Bill 2004	N			N	
Institute of Teachers Bill 2004				N	
Jury Amendment Bill 2004	N				
Jury Amendment (Majority Verdicts) Bill 2004*	N, R				
Juvenile Offenders Legislation Amendment Bill 2004	N,R			N	
Legal Profession Legislation Amendment (Advertising) Bill 2003	C, R		C, R	N	
Licensing And Registration (Uniform Procedures) Amendment (Photo ID) Bill 2004				C	
Liquor Amendment (Parliamentary Precincts) Bill 2004				N	
Local Government Amendment (Council and Employee Security) Bill 2004	N			N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Local Government Amendment (Discipline) Bill 2004				N	
Local Government Amendment (Public-Private Partnerships) Bill 2004	N,R		R	N	
Mine Health and Safety Bill 2004	N, R	N	C	N, R	
Mining Amendment (Cyanide Leaching) Bill 2004*	N, R				
Mining Amendment (Miscellaneous Provisions) Bill 2004	C, R			N	
National Parks and Wildlife Amendment (Jenolan Caves Reserve Trust) Bill 2004	N				
NSW Self Insurance Corporation Bill 2004				N	
Noxious Weeds Amendment Bill 2004				N	
Nurses and Midwives Amendment (Performance Assessment) Bill 2004	N, R			N	
Occupational Health and Safety Amendment (Prosecutions) Bill 2003	N				
Parliamentary Electorates and Elections Amendment (Prohibition on Voting Rights by Criminals) Bill 2004*	R				
Partnership Amendment (Venture Capital Funds) Bill 2004	C			C	
Passenger Transport Amendment (Bus Reform) Bill 2004	N, R		N, C, R	N	
Police Amendment (Senior Executive Transfers) Bill 2004				C	
Police Integrity Commission Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment Bill 2004				N	
Prevention of Cruelty to Animals Amendment (Tail Docking) Bill 2004				C	
Professional Standards Amendment Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Protected Estates Amendment (Missing Persons) Bill 2004				N	
Public Lotteries Legislation Amendment Bill 2004				N	
Redfern-Waterloo Authority Bill 2004				N,R	
Regional Development Bill 2004				N	
Registered Clubs Legislation Amendment Bill 2004	N				
Residential Tenancies (Public Housing) Bill 2004	N			N	
Retail Leases Amendment Bill 2004				N	
Road Transport Legislation Amendment (Public Transport Lanes) Bill 2003	N, C				
Road Transport (General) Amendment (Licence Suspension) Bill 2004	N	C	R		
Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2003				C	
Rookwood Necropolis Amendment Bill 2004				N	
Save Orange Grove Bill 2004*	R				
Smoke-free Environment Amendment Bill 2004	N,R,C				
Snowy Mountains Cloud Seeding Trial Bill 2004				N	
Special Commission of Inquiry (James Hardie Records) Act 2004	N, R				
State Records Amendment Bill 2004	N,R,C			N	
State Revenue Legislation Further Amendment Bill 2004	N				
State Water Corporation Bill 2004				N	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Statute Law (Miscellaneous Provisions) Bill (No 2) 2004				N	
Stock Diseases Amendment (Artificial Breeding) Bill 2004	C, R			N	N
Stock Diseases Amendment (False Information) Bill 2004	C			C	
Stock Medicines Amendment Bill 2004	N	R, C		N	
Strata Schemes Management Amendment Bill 2003				N,C	
Superannuation Administration Amendment Bill 2003	N			C	
Superannuation Legislation Amendment Bill 2004				N	
Sydney Opera House Trust Amendment Bill 2004	N				
Teaching Services Amendment Bill 2004				N	
Thoroughbred Racing Legislation Amendment Bill 2004				C	
Threatened Species Legislation Amendment Bill 2004	N,R		N	N	R,C
Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Bill 2004	R			N	
Water Management Amendment Bill 2004	C, R		N	N	
Wool, Hide and Skin Dealers Bill 2004				N	
Workers Compensation and Other Legislation Amendment Bill 2004	N			N	
Workers Compensation Legislation Amendment Bill 2004	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 2004

Regulation	Minister/Correspondent	Letter sent	Reply	Digest Number
Children and Young Persons (Savings and Transitional) Amendment (Out-of-Home Care) Regulation 2003 & Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2003	Minister for Community Services	13/02/04	21/04/04	1,7
Children's Services Regulation 2004	Minister for Community Services	10/09/04 16/09/04	14/09/04 16/09/04	12
Consultation on Regulations	Premier/Acting Premier	05/03/04	15/06/04	9
Crimes (Administration of Sentences) Amendment (Testing of Correctional Staff) Regulation 2004	Minister for Justice	05/11/04	02/12/04	17
Crimes (Forensic Procedures) Amendment (DNA Database Systems) Regulation 2003	Attorney General	07/11/03	03/12/03	1
Determination of Regulatory Fee Increases	Premier	24/10/03	18/03/04	5
Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004	Minister for Infrastructure and Planning	21/09/04	22/11/04	17
Environmental Planning and Assessment Amendment (Certifier Accreditation) Regulation 2003	Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)	05/03/04 30/04/04	01/04/04 01/06/04	6,9
Landlord and Tenant (Rental Bonds) Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2003	Minister for Commerce	26/03/04 30/04/04	15/04/04 05/05/04	6,7
Pawnbrokers and Second-hand Dealers Regulation 2003	Minister for Fair Trading	24/10/03 18/11/03 23/12/03	05/11/03 10/02/04	1
Radiation Control Regulation 2003	Minister for the Environment	24/10/03	23/01/04	1
Review of Regulations	Premier	18/12/03 27/08/04 01/09/04	12/07/04 20/08/04	11
Road Transport (General) Amendment (Impounding Fee) Regulation 2003	Minister for Roads	13/02/04	15/06/04	9
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Privacy Commissioner	24/10/03 19/10/04	27/11/03	1
Road Transport (General) (Penalty Notice Offences) Amendment (Interlock Devices) Regulation 2003 and Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads	13/02/04 01/06/04 19/10/04	20/05/04 17/09/04 18/11/04	1,8,13,17