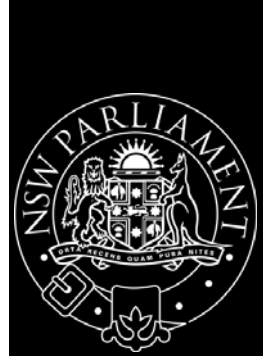


PARLIAMENT OF NEW SOUTH WALES



# Legislation Review Committee

## LEGISLATION REVIEW DIGEST

---

No 7 of 2007

---

23 November 2007

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

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

Legislation Review Digest, Legislation Review Committee, Parliament NSW Legislative Assembly. [Sydney, NSW] : The Committee, 2007, 62 p; 30cm

Chair: Mr Allan Shearan MP

23 November 2007

ISSN 1448-6954

1. Legislation Review Committee—New South Wales
  2. Legislation Review Digest No. 7 of 2007
- I Title.
- II Series: New South Wales. Parliament. Legislative Assembly. Legislation Review Committee Digest; No. 7 of 2007

## TABLE OF CONTENTS

Membership & Staff.....	ii
Functions of the Legislation Review Committee.....	iii
Guide to the <i>Legislation Review Digest</i> .....	iv
Summary of Conclusions .....	vi
Part One – Bills.....	1
SECTION A: Comment on Bills.....	1
<b>1. Agricultural Industry Services Amendment Bill 2007</b> .....	1
<b>2. Anti-Discrimination Amendment (Equal Opportunity in Public Employment) Bill 2007</b> .....	5
<b>3. Crimes (Domestic and Personal Violence) Bill 2007</b> .....	7
<b>4. Evidence (Audio and Audio Visual Links) Amendment Bill 2007</b> .....	9
<b>5. Local Court Bill 2007</b> .....	14
<b>6. Local Government Amendment Bill 2007</b> .....	21
<b>7. Miscellaneous Acts (Local Court) Amendment Bill 2007</b> .....	23
<b>8. Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007</b> ...	26
<b>9. Rice Marketing Amendment Bill 2007</b> .....	28
<b>10. Statute Law (Miscellaneous Provisions) Bill (No 2) 2007</b> .....	31
<b>11. Sydney Water Catchment Management Amendment Bill 2007</b> .....	35
<b>12. Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007</b> ....	43
SECTION B: Ministerial Correspondence — Bills Previously Considered .....	46
13. Guardianship Amendment Bill 2007 .....	46
Appendix 1: Index of Bills Reported on in 2007 .....	53
Appendix 2: Index of Ministerial Correspondence on Bills .....	57
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2007 .....	59
Appendix 4: Index of correspondence on regulations reported on in 2007 .....	62
* Denotes Private Member's Bill	

## MEMBERSHIP & STAFF

Chair	Allan Shearan MP, Member for Londonderry
Deputy	Paul Pearce MP, Member for Coogee
Members	Amanda Fazio MLC Judy Hopwood MP, Member for Hornsby Lylea McMahon MP, Member for Shellharbour Robyn Parker MLC Roy Smith MLC Russell Turner MP, Member for Orange
Staff	Catherine Watson, Committee Manager Carrie Chan, Senior Committee Officer Talina Drabsch, Senior Committee Officer Jonathan Elliott, Committee Officer Keith Johnstone, Assistant Committee Officer
Panel of Legal Advisers The Committee retains a panel of legal advisers to provide advice on Bills as required.	
Contact Details	Legislation Review Committee Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 3308
Facsimile	02 9230 3052
Email	<a href="mailto:legislation.review@parliament.nsw.gov.au">legislation.review@parliament.nsw.gov.au</a>
URL	<a href="http://www.parliament.nsw.gov.au/lrc/digests">www.parliament.nsw.gov.au/lrc/digests</a>

## FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

### 8A Functions with respect to Bills

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

### 9 Functions with respect to Regulations:

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

## GUIDE TO THE *LEGISLATION REVIEW DIGEST*

### Part One – Bills

#### Section A: Comment on Bills

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

#### Section B: Ministerial correspondence – Bills previously considered

This section contains the Committee's reports on correspondence it has received relating to Bills and copies of that correspondence. The Committee may write to the Minister responsible for a Bill, or a Private Member of Parliament in relation to his or her Bill, to seek advice on any matter concerning that Bill that relates to the Committee's scrutiny criteria.

### Part Two – Regulations

The Committee considers all regulations made and normally raises any concerns with the Minister in writing. When it has received the Minister's reply, or if no reply is received after 3 months, the Committee publishes this correspondence in the *Digest*. The Committee may also inquire further into a regulation. If it continues to have significant concerns regarding a regulation following its consideration, it may include a report in the *Digest* drawing the regulation to the Parliament's "special attention". The criteria for the Committee's consideration of regulations is set out in s 9 of the *Legislation Review Act 1987* (see page iii).

#### Regulations for the special attention of Parliament

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

#### Regulations about which the Committee is seeking further information

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

#### Copies of Correspondence on Regulations

This part of the *Digest* contains copies of the correspondence between the Committee and Ministers on Regulations about which the Committee sought

information. The Committee's letter to the Minister is published together with the Minister's reply.

## Appendix 1: Index of Bills Reported on in 2007

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

## Appendix 2: Index of Ministerial Correspondence on Bills for 2007

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

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

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

## Appendix 4: Index of correspondence on Regulations reported on in 2007

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

## SUMMARY OF CONCLUSIONS

### SECTION A: Comment on Bills

#### 1. Agricultural Industry Services Amendment Bill 2007

**Issue: Ill Defined and Wide Powers - Clause 41A – Schedule 1 [8] – Appointment of inspectors**

12. The Committee notes it is proposed that there should be a broader definition of who can carry out inspections, such as those with accountancy and audit skills. However, the Bill has no requirements regarding the qualifications or attributes, to be an inspector, as is the current situation.

#### 2. Anti-Discrimination Amendment (Equal Opportunity in Public Employment) Bill 2007

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

#### 3. Crimes (Domestic and Personal Violence) Bill 2007

**Commencement by proclamation: Clause 2**

6. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

#### 4. Evidence (Audio and Audio Visual Links) Amendment Bill 2007

**Right to a fair trial: proposed s 5BB**

18. The Committee acknowledges that the Bill alters the types of proceedings in which an accused detainee is required to be physically present before the court, providing for the use of audio visual links instead.
19. The Committee acknowledges that there are a number of benefits associated with the use of audio visual technology including improved access to court services, greater efficiency, improved court security and reduced costs in relation to witnesses and prisoner transportation. It notes the existence of concerns that the disruptions, costs and risks presented by requiring an accused detainee to be physically present for all proceedings associated with an offence may in some circumstances be disproportionate to the benefit of having the detainee physically present in the court room.



20. However, the Committee highlights that the right of an accused person to be tried in his or her presence may be affected by the Bill. Appearing by audio visual link may alienate an accused detainee from the court proceedings and affect the interaction between the accused detainee and his or her legal practitioner.
21. It is noted that the court retains its discretion to require the accused detainee to be physically present where it is deemed to be in the interests of justice, and that an accused detainee is still required to be physically present for certain proceedings including any trial or hearing of charges.
22. Accordingly, the Committee asks Parliament to consider whether the Bill unduly trespasses on the right of the accused to a fair trial.

#### **Commencement by proclamation: Clause 2**

24. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

#### **5. Local Court Bill 2007**

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

13. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

#### **6. Local Government Amendment Bill 2007**

##### **Commencement by proclamation: Clause 2**

9. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.

## **7. Miscellaneous Acts (Local Court) Amendment Bill 2007**

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

11. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.

## **8. Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007**

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

## **9. Rice Marketing Amendment Bill 2007**

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

## **10. Statute Law (Miscellaneous Provisions) Bill (No 2) 2007**

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

## **11. Sydney Water Catchment Management Amendment Bill 2007**

**Self-incrimination: proposed Part 6B – requirements to provide information**

40. The Committee will always be concerned if a Bill removes or restricts a person's right against self-incrimination. The Committee notes that the right against self-incrimination is enshrined in the *International Covenant on Civil and Political Rights*.
41. However, the Committee acknowledges that in some cases this right may be modified if there is a significant public interest in obtaining the information and where the use of that information is restricted. The Committee accepts that there is a strong public interest in ensuring the protection of catchment areas and the need to control, prevent, minimise or remove any damage to, or detrimental effect on, the quality of water and/or catchment health.
42. The Committee notes that there are some safeguards in the Bill regarding the use of any information required by authorised officers or the Sydney Catchment Authority that may incriminate the person providing that information. However, it is questionable whether the limitation on the way in which this information may be used is adequate.

**43. Accordingly, the Committee asks Parliament to consider whether the modification of the right against self-incrimination contained in the Bill unduly trespasses on the rights and liberties of individuals.**

**Excessive punishment – substantial penalties: proposed sections 62R, 62S, 63, 64, 64A**

**47. The Committee notes that there is a significant public interest in ensuring the health of catchment areas. It acknowledges that the existence of significant penalties may encourage compliance by serving as an effective deterrence to potential offenders.**

**48. However, the Committee highlights that similar penalties apply to a range of offences. Accordingly, the Committee asks Parliament to consider whether the maximum penalties applicable to certain offences are excessive.**

**Commencement by proclamation: Clause 2**

**50. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

## **12. Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007**

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

## **SECTION B: Ministerial Correspondence — Bills Previously Considered**

### **13. Guardianship Amendment Bill 2007**

**8. The Committee thanks the Minister for her reply.**



## Part One – Bills

### SECTION A: COMMENT ON BILLS

# 1. AGRICULTURAL INDUSTRY SERVICES AMENDMENT BILL 2007

Date Introduced:	16 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Nathan Rees MP
Portfolio:	Emergency Services, Water Utilities

### Purpose and Description

1. This Bill amends the *Agricultural Industry Services Act 1998* in relation to the levying and collection of rates, the expenditure of money collected from rates and the appointment of inspectors in connection with the enforcement of that Act; and for other purposes.
2. It aims to improve efficiency and ensure the intention of the legislation is clear.

### Background

3. The *Rice Marketing Amendment Bill 2007* and the *Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007* are cognate with this Bill.
4. This Bill aims to simplify and make committees more accountable in how they determine and collect compulsory charges. The *Agricultural Industry Services Act 1998* provides for committees to deliver a range of services to the growers in particular agricultural industries or areas. The services provided include fruit fly control, promotion of local product, market information to growers and training. The legislation provides for the committee to collect a charge from growers to fund the services. There are 2 committees in the Riverina district (one for wine grape growers and the other for citrus growers).
5. Under parallel legislation in Victoria, there are also such committees in the Murray Valley. The legislation in Victoria, South Australia and NSW has the same intent. However, the procedures currently prescribed in NSW for grower contributions differ from the other States, as well as being harder to apply and to audit.
6. The current practice of the citrus growers committee is to calculate the compulsory charge for each grower based on that grower's accumulated deliveries to all fruit receivers. The committee is then to invoice growers individually for that amount. This is time consuming and hard to do because the committees do not have access to individual farm consignment data. The proposed additional rate collection method will allow for a third person, such as a fruit receiver, to collect rates on behalf of the committee. Receivers can collect rates from growers when the growers deliver their

fruit to them. The amendments will enable inspectors to issue notices to receivers for them to keep appropriate records and give certain information on commodities received. This will ensure collected rates can be audited.

7. The amendments will be consistent with what is prescribed in the other States. The Agreement in Principle speech stated that the wine grape and citrus growers committees support the intent of the proposed amendments. The NSW fruit packers and processors in these industries are also said to support the proposals.
8. The amendments also include clarifying who can be appointed to be inspectors of fruit receiver records. The current legislation is interpreted as suggesting that inspectors are only regulatory officers employed by the Department of Primary Industries. It is proposed that there should be a broader definition of who can carry out inspections, such as those with accountancy and audit skills.

## The Bill

9. The Rice Marketing Amendment Bill 2007 and the Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007 are cognate with this Bill. The object of this Bill is to amend the Agricultural Industry Services Act 1998 (**the principal Act**) so as:
  - (a) to require an agricultural industry services committee's 5-year plan to outline the services it proposes to perform and the rates that will have to be levied to pay for those services, and
  - (b) to enable rates to be collected on behalf of an agricultural industry services committee by persons to whom the committee's constituents deliver produce, and
  - (c) to make it clear that rates levied to fund the provision of particular agricultural industry services may be applied towards the provision of those services only, and
  - (d) to provide that inspectors under that Act do not have to be officers of the Department of Primary Industries, and
  - (e) to enable inspectors under that Act to require primary producers and others to keep certain records, and
  - (f) to enact savings and transitional provisions and make other minor, consequential and ancillary amendments.

### 10. Outline of provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the *Agricultural Industry Services Act 1998* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the consequential amendment to the *Wine Grapes Marketing Board (Reconstitution) Act 2003* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act

will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendment of Agricultural Industry Services Act 1998**

#### **5-year plans**

**Schedule 1 [2]** amends section 15 of the principal Act so as to require an agricultural industry services committee's 5-year plan to outline the services it proposes to perform and the rates that will have to be levied to pay for those services.

**Schedule 1 [3]** amends section 23 of the principal Act so as to provide that the rates levied by an agricultural industry services committee must be consistent with the proposals contained in its 5-year plan.

#### **Collection of rates**

**Schedule 1 [4]** substitutes section 24 of the principal Act. The new section differs from the old in that it provides that rates that become payable on the delivery of produce may be collected on behalf of the relevant agricultural industry services committee by the person to whom the produce is delivered.

#### **Application of rates**

**Schedule 1 [5]** amends section 29 of the principal Act so as to make it clear that rates levied to fund the provision of particular agricultural industry services may be applied towards the provision of those services only.

#### **Inspectors**

**Schedule 1 [8]** inserts proposed section 41A into the principal Act. The new section provides that the Minister may appoint any member of the Government Service to be an inspector (rather than a "Departmental inspector" as they are currently called) for the purposes of all or any specified provisions of that Act.

#### **Keeping of records**

**Schedule 1 [6]** substitutes section 33 of the principal Act. The new section differs from the old in that it provides that an inspector may require not only the production of information as to whether, and to what extent, a person is a primary producer but also the keeping of records from which such information can be derived.

#### **Other matters**

**Schedule 1 [9]** amends Schedule 4 to the principal Act so as to enable the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [10]** amends Schedule 4 to the principal Act so as to enact specific provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [1] and [7]** make minor, consequential or ancillary amendments.

### **Schedule 2 Consequential amendment of Wine Grapes Marketing Board (Reconstitution) Act 2003**

**Schedule 2** amends section 17 of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* as a consequence of the amendments to be made by Schedule 1 [8].

## Issues Considered by the Committee

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

#### Issue: Ill Defined and Wide Powers - Clause 41A – Schedule 1 [8] – Appointment of inspectors

11. The proposed section allows the Minister to appoint any member of the Government Service to be an inspector in relation to all or any specified committees, for the purposes of all or any specified provisions of the legislation.

12. **The Committee notes it is proposed that there should be a broader definition of who can carry out inspections, such as those with accountancy and audit skills. However, the Bill has no requirements regarding the qualifications or attributes, to be an inspector, as is the current situation.**

*The Committee makes no further comment on this Bill.*



## 2. ANTI-DISCRIMINATION AMENDMENT (EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT) BILL 2007

Date Introduced:	13 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Morris Iemma MP
Portfolio:	Premier

### Purpose and Description

1. The purpose of the Bill is to amend the *Anti-Discrimination Act 1977*:
  - (a) to remove the requirement under Part 9A for agencies to report to the Equal Employment Opportunity Director on equal employment opportunity matters; and
  - (b) to change references in Part 9A to persons who have a disability from physically handicapped or physically impaired persons.

### Background

2. Public sector agencies subject to Part 9A of the *Anti-Discrimination Act 1977* are required to annually report to the Director of Equal Opportunity in Public Employment regarding the equal employment opportunity activities and programs undertaken by the agency and their results. Each agency must also set out the proposed activities and aims for the following year. The annual report of each agency is also required to include a statement that sets out the equal employment opportunity achievements of the agency in the past year and the key strategies proposed for the following year.
3. According to the Agreement in Principle speech:

The internal government red tape review, stage 1, recommended that agencies be required to report on equal employment opportunity outcomes only once in their annual reports, instead of being required to report in both their annual report and separately to the Director of Equal Opportunity in Public Employment. The Bill implements this recommendation. It merely removes the duplicative requirement to report on equal employment opportunity outcomes to the Director of Equal Opportunity in Public Employment. This will lead to administrative savings for agencies without affecting their substantive obligations to prepare and implement management plans under the Act.<sup>1</sup>

### The Bill

4. The Bill proposes to amend s 122C of the *Anti-Discrimination Act 1977* to change the objects of Part 9A so that it refers to 'disability' instead of 'physical impairment': schedule 1[1]. The reference to 'physically handicapped persons' in sections 122C and 122I is to be replaced with 'persons who have a disability': schedule 1[2].

---

<sup>1</sup> J J Aquilina MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 13 November 2007.

5. The Bill also proposes to delete s 122L: schedule 1[3]. Section 122L sets out the requirements applying to relevant authorities regarding the report on the equal employment opportunity management plan that is to be made annually to the Director. The relevant authorities include Departments, the Teaching Service, specific divisions of the Government Service, State owned corporations, and the Police Service, amongst others.

## Issues Considered by the Committee

- |   |
|---|
| <ol style="list-style-type: none"><li>6. <b>The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b></li></ol> |
|---|

***The Committee makes no further comment on this Bill.***

### 3. CRIMES (DOMESTIC AND PERSONAL VIOLENCE) BILL 2007

Date Introduced:	16 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon David Campbell MP
Portfolio:	Minister for Police

#### Purpose and Description

1. The Bill is designed to protect persons from domestic and personal violence. It repeals Part 15A of the *Crimes Act 1900* and creates a new stand-alone Act dealing with domestic and personal violence.

#### Background

2. Part 15A of the *Crimes Act 1900* provides for the issue of apprehended domestic violence orders and apprehended personal violence orders. The Bill proposes to create a separate Act to deal with these matters to give ‘full recognition to the seriousness of violence against women and children’.<sup>2</sup> According to the Agreement in Principle speech:

The initiatives in this bill were part of this Government’s commitment to the people of New South Wales that if it were re-elected domestic violence would play a prominent part in legislative reform. The initiatives in the bill are specifically linked to the State Plan priority to address domestic and family violence.<sup>3</sup>

#### The Bill

3. The Bill repeals and re-enacts Part 15A of the *Crimes Act 1900* which deals with the issuing of apprehended domestic violence orders and apprehended personal violence orders by courts and authorised officers as well as the enforcement of those orders. However, the Bill makes some modifications:
  - (a) to enable the charge in respect of an offence to indicate whether the offence is a domestic violence offence;
  - (b) to require a court in criminal proceedings where a person has been found guilty of a domestic violence offence to direct that a recording be made in the person’s criminal record that the offence was a domestic violence offence and to direct that similar recordings be made in relation to domestic violence offences previously committed by the person;
  - (c) to require a court when making an apprehended domestic violence order or interim apprehended domestic violence order for an adult to include as a protected person

<sup>2</sup> T R Gadiel MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 16 November 2007.

<sup>3</sup> T R Gadiel MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 16 November 2007.

under the order any child with whom the adult has a domestic relationship unless there are good reasons for not doing so;

(d) to require a court, when a person is charged with a serious personal violence offence, to make an interim apprehended violence order to protect the victim of the alleged offence;

(e) to incorporate the offence of stalking or intimidation with the intention of causing someone to fear physical or mental harm which is currently s 545AB of the *Crimes Act 1900*;

(f) to set out the application procedures and provisions relating to apprehended violence order proceedings rather than providing for Part 6 of the *Local Courts Act 1982* to apply.

4. The Bill proposes to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:

- to enable a police officer to require a person to disclose his or her identity if the police officer reasonably suspects that an apprehended violence order has been made against the person; and
- to expand the range of dangerous implements that a police officer may search for in a dwelling provided the police officer reasonably believes they may have been used or may be used to commit a domestic violence offence.

## Issues Considered by the Committee

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

#### Commencement by proclamation: Clause 2

5. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

**6. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 4. EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL 2007

Date Introduced:	15 November 2007
House Introduced:	Legislative Council
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

### Purpose and Description

1. The purpose of the Bill is to amend the *Evidence (Audio and Audio Visual Links) Act 1998*:
  - so that in certain criminal proceedings both adult and child accused detainees will be required to appear physically before the court on their first appearance in relation to the alleged offence and by audio visual link (if available) on any second or any subsequent appearance in relation to the alleged offence unless the court otherwise directs in the interests of the administration of justice;
  - to specify additional factors to be taken into account by a court in deciding whether to make such a direction in respect of the appearance of an accused detainee (whether an adult or a child) and to provide for such a court to take into account special factors specified in rules of court in the case of child accused detainees;
  - to enable designated government agencies to apply for the making of such a direction;
  - to require certain government witnesses to give evidence to a NSW court by audio or audio visual links (subject to any applicable rules of court and unless the court otherwise directs); and
  - to make it clear that Children's Registrars may make directions for use of audio visual links in care proceedings.

### Background

2. The *Evidence (Audio and Audio Visual Links) Act 1998* provides for the use of audio and audio visual technology in NSW courts. A number of benefits are associated with the use of audio visual technology including:<sup>4</sup>
  - improved access to court services, especially in regional and remote areas
  - greater efficiency
  - improved court security and safety

<sup>4</sup> J Hatzistergos MLC, Legislative Assembly *Hansard*, 15 November 2007.

- reduced witness costs
  - less need for the transportation of accused detainees for brief court appearances
  - reduction in prisoner transportation costs.
3. According to the Agreement in Principle speech:
- The disruptions, risks and costs involved in the process [transporting accused detainees to court] are generally not proportionate to the length of the court proceedings and are frequently not justified given the nature of these proceedings. There is a capacity to improve the current situation from both a humanitarian and judicial administration perspective. This bill is designed to do that. Accordingly, the purpose of the bill is to make amendments to the *Evidence (Audio and Audio Visual Links) Act* regarding custodial appearances in New South Wales courts to better facilitate the appropriate use of audio visual links in the administration of justice and to ensure that the benefits of modern audio visual link technology can be fully realised. At the same time the bill ensures that the accused's right to a fair trial and to be physically present at that trial is in no way jeopardised or undermined.<sup>5</sup>
4. The Bill follows consultation with the Chief Justice at Common Law, the Chief Judge of the District Court, the Chief Magistrate, the NSW Bar Association, the Law Society of NSW, the Legal Aid Commission, Aboriginal Legal Services and the Director of Public Prosecutions.

## The Bill

### Proposed s 5BAA

5. The Bill proposes to insert s 5BAA into the *Evidence (Audio and Audio Visual Links) Act 1998*. Section 5BAA provides that a government agency witness must, unless otherwise directed by the court, give evidence to the court by audio link or audio visual link from any place within NSW, provided the necessary audio links or audio visual links are available.
6. A court cannot direct otherwise unless the evidence to be given is likely to be contentious and it is in the interests of the administration of justice for the government agency witness to physically appear before the court.

### Proposed s 5BA

7. The Bill proposes to insert a new s 5BA into the Act to provide that an accused detainee charged with an offence and required to appear before a court in physical appearance proceedings must appear physically unless otherwise directed by the court. 'Physical appearance proceedings' are defined by an amendment to s 3 to include:
- (a) any trial (including an arraignment on the day appointed for the trial) or hearing of charges;
  - (b) any inquiry into a person's fitness to be tried for an offence;
  - (c) any proceedings relating to bail:

---

<sup>5</sup> J Hatzistergos MLC, Legislative Assembly *Hansard*, 15 November 2007.

(i) brought before a Magistrate or justice in respect of the period between the person being charged with the offence and the person's first appearance before a court in relation to the offence; or

(ii) on a person's first appearance before a court in relation to the offence.

8. This requirement does not apply:

- to bail proceedings that occur on a weekend or public holiday or regarding an accused detainee held at a prescribed place;
- if the parties to the proceeding consent to the appearance by audio visual link from any place in NSW at which the accused detainee is in custody.

9. The court may only make a direction that the accused detainee appear by audio visual link if satisfied that it is in the interests of the administration of justice. The court must consider the following when determining whether it is in the interests of the administration of justice:

- the risk that the personal security of a particular person/s may be endangered if the accused detainee appears in the courtroom;
- the risk of the accused detainee escaping or attempting to escape;
- the past behaviour of the accused detainee when appearing before a court;
- the conduct of the accused detainee while in custody, including previous periods in which the accused was held in custody;
- the potential for disruption of the accused detainee's participation in a rehabilitation or education program;
- safety and welfare considerations in transporting the detainee;
- the efficient use of available judicial and administrative resources;
- any other relevant matter raised by a party to the proceeding or other applicant.

### **Proposed s 5BB**

10. Proposed s 5BB provides that an accused detainee charged with an offence and required to appear before a NSW court in criminal proceedings concerning the offence other than physical appearance proceedings must appear before the court by audio visual link unless directed otherwise by the court. However, this is conditional on the necessary audio visual links being available.

11. The court may only direct otherwise if satisfied that it is in the interests of the administration of justice for the accused detainee to physically appear before the court having considered any factors relevant to the circumstances of the case plus any factors specified in rules of court.

## Deletion of s 5BBA

12. The Bill proposes to delete s 5BBA which specified that an accused detainee, other than an accused child detainee, required to appear before a NSW court in any relevant criminal proceedings must appear physically before the court unless otherwise directed.

## Issues Considered by the Committee

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

#### Right to a fair trial: proposed s 5BB

13. The *Evidence (Audio and Audio Visual Links) Act 1998* currently provides for the use of audio and audio visual links in the giving and receiving of evidence in certain circumstances. An adult accused detainee is usually required to appear by audio visual link in preliminary proceedings and physically in relevant criminal proceedings including any trial or hearing of a charge, committal proceedings, sentencing proceedings, hearing of appeals arising out of a trial and certain bail proceedings before and on the person's first appearance. Child detainees are currently required to appear physically in preliminary and relevant criminal proceedings.
14. The Bill essentially alters the default position so that accused detainees are generally required to appear physically before the court on their first appearance and by audio visual link on certain subsequent appearances unless they are deemed to be physical appearance proceedings.<sup>6</sup> Accused detainees are accordingly no longer required to appear physically before the court in committal proceedings, sentencing hearings or in hearings of appeals arising from a trial or hearing. These provisions apply to both adult and child accused detainees.
15. Article 14(3)(d) of the *International Covenant on Civil and Political Rights* provides that, in the determination of any criminal charge, a person is entitled to be tried in his/her presence. The proposals contained in the Bill affect the extent to which an accused detainee is required to be physically present in certain proceedings, providing instead for appearance by audio visual link where relevant.
16. The Committee acknowledges that there may be substantial costs involved and resources consumed in the transportation of detainees to the court for a relatively short appearance. There may also be safety issues, both for the detainee and others. It notes that some view these costs as disproportionate to the length of proceedings and are considered to not be justified in the circumstances.<sup>7</sup>
17. The Committee notes the existence of a safeguard in that the court retains its discretion to direct otherwise where necessary in the interests of the administration of justice. It also notes that certain proceedings still require the accused detainee to physically appear before the court including any trials or hearing of charges.

---

<sup>6</sup> Physical appearance proceedings include trials or hearing of charges, any inquiry into a person's fitness to be tried, and any proceeding relating to bail brought: before a Magistrate or justice in respect of the period between the person being charged with the offence and the person's first appearance before a court in relation to the offence; or on a person's first appearance before a court in relation to the offence (proposed s 3).

<sup>7</sup> J Hatzistergos MLC, Legislative Assembly *Hansard*, 15 November 2007.



18. **The Committee acknowledges that the Bill alters the types of proceedings in which an accused detainee is required to be physically present before the court, providing for the use of audio visual links instead.**
19. **The Committee acknowledges that there are a number of benefits associated with the use of audio visual technology including improved access to court services, greater efficiency, improved court security and reduced costs in relation to witnesses and prisoner transportation. It notes the existence of concerns that the disruptions, costs and risks presented by requiring an accused detainee to be physically present for all proceedings associated with an offence may in some circumstances be disproportionate to the benefit of having the detainee physically present in the court room.**
20. **However, the Committee highlights that the right of an accused person to be tried in his or her presence may be affected by the Bill. Appearing by audio visual link may alienate an accused detainee from the court proceedings and affect the interaction between the accused detainee and his or her legal practitioner.**
21. **It is noted that the court retains its discretion to require the accused detainee to be physically present where it is deemed to be in the interests of justice, and that an accused detainee is still required to be physically present for certain proceedings including any trial or hearing of charges.**
22. **Accordingly, the Committee asks Parliament to consider whether the Bill unduly trespasses on the right of the accused to a fair trial.**

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

#### **Commencement by proclamation: Clause 2**

23. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

24. **Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 5. LOCAL COURT BILL 2007

Date Introduced:	13 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

### Purpose and Description

1. This Bill establishes the Local Court of New South Wales to replace separate Local Courts within New South Wales (sittings will be held at various locations within NSW); to provide for the appointment of Magistrates and other officers of the Court; to confer certain jurisdiction on the Court; to repeal the *Local Courts Act 1982*; and for other purposes. See also the *Miscellaneous Acts (Local Court) Amendment Bill 2007*.
2. Currently, each Local Court is established separately and proceedings are commenced in a specific Local Court. If a party needs to have proceedings in one Local Court be dealt with in another Local Court, the party has to apply to have proceedings transferred to the other Local Court. This has restrictions on the efficient operations of Local Courts. A registrar for one Local Court cannot exercise powers in relation to proceedings at another Local Court. This also restricts parties who are required to file documents in proceedings at a particular Local Court even if it may be more convenient to file a document at another Local Court's registry.
3. Courts such as the Supreme Court and the District Court are established as a single entity with authority to operate throughout NSW. A registrar in one location can make orders in a case that was commenced in another location without having to transfer the case to the other location.
4. This Bill aims to create a Local Court of NSW as a single entity. Court and registry services will be operating more effectively if there is a single court operating throughout the NSW. For instance, a party will be able to make inquiries about proceedings at any registry rather than contacting the registry where the matter was to be heard. In future, parties will be able to electronically file documents centrally through JusticeLink even if the proceedings are heard at courts across NSW.
5. This Bill replaces the *Local Courts Act 1982*. It will carry over most existing provisions with some reorganisation of provisions so that similar matters are grouped together.
6. It retains the appointments of existing magistrates and other officers and enables the court to continue dealing with existing proceedings. Some changes have been made. A person is now required to have a minimum of 5 years' experience as a legal practitioner before being appointed as a magistrate. A single Local Court Rule Committee will be created to make rules in relation to civil, criminal and application proceedings instead of the 2 rule committees. It will introduce the concept of a relevant registrar.

## Background

7. This Bill will replace the separately constituted Local Courts in NSW with a single Local Court of NSW, which will sit at various locations across NSW. A similar change took place in 1973 when the District Court of NSW was created from several separately constituted District Courts. Local Courts sit at 155 locations.
8. The Productivity Commission's Report on Government Services 2007 found that Local Courts handle more matters than any other court in Australia. In 2005-06, Local Courts finalised 90% of the State's civil matters and 95% of the State's criminal matters.
9. The cognate Bill is the *Miscellaneous Acts (Local Court) Amendment Bill 2007*, which will update the references to the Local Court of NSW.

## The Bill

10. The object of this Bill is to replace the separate Local Courts within New South Wales with a single Local Court (sittings of which will be held at various locations within New South Wales). The Bill repeals the *Local Courts Act 1982* and enacts new provisions relating to the Local Court of New South Wales (***the Court***). The Bill:
  - (a) contains provisions for the appointment of Magistrates and other officers of the Court (existing Magistrates and other officers will continue to hold office),
  - (b) requires at least 5 years' experience as an Australian lawyer for appointment as a Magistrate,
  - (c) brings the provisions for appointment of acting Magistrates into line with those applicable to acting Judges of the District Court,
  - (d) continues the existing Local Court jurisdiction (the Court, like the current Local Courts, will have a civil and criminal jurisdiction and a special jurisdiction relating to application proceedings).

### 11. Outline of provisions

#### Part 1 Preliminary

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

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

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

**Clause 4** enables the Governor to make regulations in relation to the proposed Act.

**Clause 5** repeals the *Local Courts Act 1982* and gives effect to proposed Schedule 4 (Savings, transitional and other provisions).

**Clause 6** requires the proposed Act to be reviewed 5 years after it is assented to and a report on the outcome of the review to be tabled in Parliament.

#### Part 2 The Local Court of New South Wales

##### Division 1 Constitution and jurisdiction

**Clause 7** establishes the Local Court of New South Wales (***the Court***) and provides that it is to be a court of record.

**Clause 8** provides that the Court is to be constituted by a Magistrate sitting alone unless otherwise provided by or under the proposed Act or any other Act or law.

**Clause 9** provides that the Court has a civil jurisdiction, a special jurisdiction and a criminal jurisdiction.

**Clause 10** divides the Court into the General Division and the Small Claims Division for the purposes of the exercise of its civil jurisdiction.

**Clause 11** provides that the Court has State-wide jurisdiction.

### **Division 2 Magistrates**

See also proposed Schedule 1 for provisions relating to Magistrates.

**Clause 12** provides that the Court is to be composed of a Chief Magistrate and such other Magistrates as may be appointed from time to time.

**Clause 13** allows the Governor to appoint any person who is an Australian lawyer of at least 5 years' standing (or a current or former judicial officer) to be a Magistrate and provides that a Magistrate is taken to be a justice of the peace.

**Clause 14** provides that the Governor may appoint a Magistrate to be Chief Magistrate.

**Clause 15** provides that the Governor may appoint a Magistrate to be a Deputy Chief Magistrate.

**Clause 16** provides that the Governor may appoint a person eligible to be appointed as a Magistrate to act as a Magistrate for a term not exceeding 12 months. A former judicial officer may be appointed until the age of 75 years.

### **Division 3 Assessors**

See also proposed Schedule 2 for provisions relating to Assessors.

**Clause 17** allows the Minister to appoint any person who is an Australian lawyer to be an Assessor.

### **Division 4 Registrars and other officers**

**Clause 18** provides for the employment of registrars and deputy registrars under Chapter 1A of the *Public Sector Employment and Management Act 2002* and allows the appointment of a registrar as the registrar for a designated place.

**Clause 19** provides that a registrar has the functions conferred by or under the proposed Act, the rules or any other Act or law and that those functions may be exercised in respect of any place in the State (regardless of whether a registrar is the registrar for a designated place).

**Clause 20** allows a registrar, assistant registrar or other officer of the District Court to, subject to the rules, exercise the functions of a person holding a corresponding position in the Local Court.

**Clause 21** provides that a reference in any other Act or instrument to the relevant registrar of the Local Court is a reference to the registrar for a particular place or the registrar authorised to exercise a particular function or the registrar for the place at which the proceedings are being, or have been, heard (depending on the context in which the phrase is used).

### **Division 5 Exercise of jurisdiction**

**Clause 22** allows for sittings of the Court to be held at such places and times as are directed by the Chief Magistrate.

**Clause 23** makes provision for the Chief Magistrate to make arrangements for the business of the Court by giving directions concerning the exercise of jurisdiction and functions, sittings and the establishment of circuits. However, before making a direction that would substantially alter the frequency of sittings at a particular place relative to the previous calendar year the Chief Magistrate must consult with the Attorney General.

**Clause 24** gives the Court the same powers as the District Court in dealing with a person who appears to be, or is accused of being, guilty of contempt of court and also allows the Court to refer such a matter to the Supreme Court for determination.

#### **Division 6 Rules of court and practice notes**

**Clause 25** establishes the Local Court Rule Committee and specifies the members who are to comprise the Committee.

**Clause 26** gives the Rule Committee the power to make rules in relation to the practice and procedure of the Court.

**Clause 27** allows the Chief Magistrate to issue practice notes in relation to any matter with respect to which rules may be made (subject to the rules).

**Clause 28** provides that the Court may give directions, in relation to particular proceedings, with respect to any aspect of practice or procedure not otherwise provided for by the proposed Act or any other Act.

### **Part 3 Civil jurisdiction**

#### **Division 1 Preliminary**

**Clause 29** defines certain expressions used in the proposed Part.

#### **Division 2 Jurisdiction**

**Clause 30** confers jurisdiction on the Court sitting in its General Division to hear and determine proceedings on any money claim or proceedings to recover detained goods so long as the amount claimed does not exceed \$60,000. The proposed section also confers jurisdiction on the Court sitting in its Small Claims Division to hear and determine such proceedings so long as the amount claimed does not exceed \$10,000.

**Clause 31** allows the Court, when sitting in its General Division, to exceed the jurisdictional limit of \$60,000 by up to 20 per cent in specified circumstances.

**Clause 32** allows the Court, upon application in proceedings concerning a contract, to exercise the same jurisdiction as the Supreme Court to refuse to enforce any or all of the provisions of the contract under section 7 (1) (a) of the *Contracts Review Act 1980*.

**Clause 33** specifies certain proceedings that are excluded from the jurisdiction of the Court.

**Clause 34** makes provision with respect to the jurisdiction of the Court to hear and determine proceedings with respect to a cause of action that arose outside of the State and with respect to a defendant that is not within the State.

#### **Division 3 Proceedings in Small Claims Division**

**Clause 35** provides that the jurisdiction of the Court sitting in its Small Claims Division may be exercised by a Magistrate or an Assessor. The proposed section also provides that proceedings are not required to be recorded and are to be conducted with as little formality and technicality as possible, without application of the rules of evidence and generally without the cross-examination of witnesses.

**Clause 36** requires a Magistrate or an Assessor to attempt to bring the parties to proceedings in the Small Claims Division to a settlement before giving final judgment or making a final order in those proceedings.

**Clause 37** provides that the Court sitting in its Small Claims Division has no power to award costs (except as provided by the rules).

#### **Division 4 Appeals from the Local Court**

**Clause 38** provides that all judgments and orders of the Court in its exercise of civil jurisdiction are final and conclusive.

**Clause 39** deals with appeals as of right. A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court in point of law

may appeal to the Supreme Court. A party to proceedings before the Court sitting in its Small Claims Division who is dissatisfied with a judgment or order of the Court on the ground of lack of jurisdiction or denial of natural justice may appeal to the Supreme Court.

**Clause 40** deals with appeals requiring leave. A party to proceedings before the Court sitting in its General Division who is dissatisfied with a judgment or order of the Court on a ground that involves a question of mixed law and fact, or an interlocutory judgment or order, or a judgment or order made by consent, or a costs order, may appeal to the Supreme Court but only by leave of the Supreme Court.

**Clause 41** sets out how the Supreme Court may deal with appeals under the proposed Division.

#### **Division 5 Rules**

**Clause 42** allows rules to be made for or with respect to specified matters relating to the civil jurisdiction of the Court (provided they are not inconsistent with the uniform rules under the *Civil Procedure Act 2005* and do not relate to any costs matter that is regulated by Division 11 of Part 3.2 of the *Legal Profession Act 2004*).

### **Part 4 Special jurisdiction**

#### **Division 1 Preliminary**

**Clause 43** defines certain expressions used in the proposed Part.

**Clause 44** provides that the proposed Part applies to any proceedings with respect to matters for which jurisdiction is conferred on the Court by or under any other Act or law, other than criminal proceedings or proceedings with respect to any matter for which jurisdiction is conferred on the Court by proposed Part 3 (Civil jurisdiction), defined as **application proceedings** in proposed section 43 (and also known as application proceedings in the *Local Courts Act 1982*).

#### **Division 2 Commencement of proceedings**

**Clause 45** provides that application proceedings commence upon issuing and filing an application notice.

**Clause 46** allows a police officer or public officer to commence application proceedings, if authorised to do so, by issuing an application notice and filing the notice in accordance with the proposed Division.

**Clause 47** allows a person to commence application proceedings by issuing an application notice, signed by a registrar, and filing the notice in accordance with the proposed Division.

**Clause 48** provides that an application notice may not relate to more than one matter.

**Clause 49** deals with service of an application notice.

**Clause 50** provides that application proceedings are taken to have commenced on the date on which an application notice is filed and allows for the filing of an application notice in the absence of service in certain circumstances.

**Clause 51** requires application proceedings to be brought within 6 years from the date that the matter to which the application relates is alleged to have arisen.

**Clause 52** allows application proceedings to be commenced, in the event that another Act or statutory rule provides for application proceedings to be commenced otherwise than by application notice, in accordance with that Act or statutory rule or in accordance with proposed Part 4.

#### **Division 3 Hearing of proceedings**

**Clause 53** requires the Court, on the first return date in application proceedings or at a later time determined by the Court, to set a date, time and place for hearing and determining the proceedings. If the respondent is not present at the first return date, the Court may advise the respondent of the date, time and place for hearing or it may proceed to hear and determine the matter.

**Clause 54** provides for application proceedings to be heard in open court.

**Clause 55** allows the Court to change the venue of application proceedings if appropriate.

**Clause 56** confirms the respondent's right to defend application proceedings and any ancillary proceedings.

**Clause 57** provides that a party may appear personally or by an Australian legal practitioner or other representative empowered by an Act or other law to appear for the applicant or respondent. A police officer who is an applicant may also appear by a police prosecutor.

**Clause 58** specifies who may conduct the case.

**Clause 59** confirms that evidence is to be on oath.

**Clause 60** requires application proceedings to be recorded.

**Clause 61** gives the Court the power to adjourn application proceedings to a specified time and place.

**Clause 62** allows the Court to make directions with respect to procedural irregularities.

**Clause 63** allows the Court to dispense with any requirement of the rules if it is in the interests of justice to do so.

**Clause 64** permits the Court to stay application proceedings (including the enforcement of an order) permanently or to a specified day.

**Clause 65** gives the Magistrate the power to issue a warrant for the arrest of a respondent during proceedings if he or she fails to appear.

**Clause 66** applies Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* to application proceedings (that Part deals with the attendance of witnesses and production of evidence).

**Clause 67** applies Part 4 of Chapter 4 of the *Criminal Procedure Act 1986* to warrants of arrest and warrants of commitment issued in application proceedings.

**Clause 68** provides that an order for the payment of money by a party to application proceedings may be enforced in a court of competent jurisdiction.

**Clause 69** enables the Court to award costs in application proceedings at its discretion.

**Clause 70** sets out the appeal procedures in relation to any order arising from an application notice.

#### **Division 4 Rules and forms**

**Clause 71** specifies matters relating to application proceedings with respect to which rules may be made.

**Clause 72** enables the Chief Magistrate to approve forms to be used in connection with application proceedings.

#### **Schedule 1 Provisions relating to Magistrates**

**Schedule 1** sets out matters relating to the appointment of Magistrates including part-time arrangements, vacation of office, remuneration, superannuation, accrued leave and conditions of service.

#### **Schedule 2 Provisions relating to Assessors**

**Schedule 2** sets out matters relating to the employment of Assessors, including term of office, remuneration, leave, vacation of office and removal from office.

#### **Schedule 3 Provisions relating to Rule Committee**

**Schedule 3** sets out the matters relating to membership of the Rule Committee (including term of office, vacancy of office and deputies) and meetings of the Rule Committee (including procedures, chairperson and quorum).

#### **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Issues Considered by the Committee**

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

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

12. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

13. **Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

*The Committee makes no further comment on this Bill.*



## 6. LOCAL GOVERNMENT AMENDMENT BILL 2007

Date Introduced:	15 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Minister for Local Government

### Purpose and Description

1. The purpose of the Bill is to amend the *Local Government Act 1993*:
  - (a) to clarify the relationship between public-private partnerships and the tendering requirements of the *Local Government Act*,
  - (b) to clarify that certain annual charges may be levied on individual lots in a strata scheme and on company title properties.

### Background

2. The *Local Government Amendment (Public-Private Partnerships) Act 2004* provided councils with an alternative to the tendering requirements of the *Local Government Act 1993*, when considering entry into a public-private partnership.
3. According to the Agreement in Principle speech:

...concerns have been raised in the local government industry that the provisions as currently drafted are ambiguous.

Some doubt has been expressed whether these provisions operate as was intended, namely, to enable councils to choose either to go to tender as required by section 55 of the Act or use the public-private partnership provisions for certain projects. The aim of this bill is to make this choice – and its corresponding procedural requirements – clearer for councils, developers and the public.<sup>8</sup>

### The Bill

4. Section 55 of the *Local Government Act* sets out the requirements for tendering, including those contracts for which a Council must invite tenders before entering into them. The Bill proposes to add the following to the list of contracts to which s 55 does not apply:
  - a contract to enter a public-private partnership
  - if a council has entered into a public-private partnership – a contract entered into by the council for the purposes of carrying out a project under the public-private

<sup>8</sup> P G Lynch MP, Legislative Assembly *Hansard*, 15 November 2007.

partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12).

5. It also proposes to insert s 55A to extend the operation of s 55 to council-related entities. However, if the entity is formed under a public-private partnership, s 55 only applies to the extent that the contract is not part of a project that has been assessed or reviewed in accordance with Part 6 of Chapter 12.
6. The Bill proposes to insert a new definition of 'public-private partnership' in s 400B. A public-private partnership is accordingly to be defined as:

...an arrangement:

- (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and
- (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control,

but does not include any such arrangement if it is of a class that has been excluded from the operation of this Part by the regulations.

7. The Bill proposes to insert s 495A into the Act to provide that strata lots and company titles are separate parcels of land for annual charges.

## Issues Considered by the Committee

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

#### Commencement by proclamation: Clause 2

8. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- |  |
|--|
| <ol style="list-style-type: none"><li>9. <b>Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.</b></li></ol> |
|--|

***The Committee makes no further comment on this Bill.***

## 7. MISCELLANEOUS ACTS (LOCAL COURT) AMENDMENT BILL 2007

Date Introduced:	13 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon David Campbell MP
Portfolio:	Police

### Purpose and Description

1. This Bill is cognate with the *Local Court Bill 2007*. It aims to amend various Acts and instruments as a consequence of the proposed enactment of the *Local Court Act 2007*.
2. The proposed *Local Court Act 2007* (**the 2007 Act**) repeals the *Local Courts Act 1982* (**the 1982 Act**). Accordingly, this Bill will ensure references to the 1982 Act in other Acts and instruments are replaced with references to the 2007 Act. References in other Acts and instruments to “a Local Court” will be replaced with references to “the Local Court” and references to the Local Court at a particular place will be replaced with references to either the Local Court or the Local Court sitting at a particular place.

### Background

3. This Bill is cognate with the *Local Court Bill 2007*, and will update the references to the Local Court of NSW.
4. The *Local Court Bill 2007* will replace the separately constituted Local Courts in NSW with a single Local Court of NSW, which will sit at various locations across NSW.
5. There are numerous references to Local Courts in Acts and regulations. This Bill will update these references with references to the Local Court of New South Wales.

### The Bill

6. The object of this Bill is to make amendments to various Acts and instruments as a consequence of the proposed enactment of the *Local Court Act 2007*. The proposed *Local Court Act 2007* (**the 2007 Act**) repeals the *Local Courts Act 1982* (**the 1982 Act**). On the commencement of the 2007 Act, the Local Courts throughout New South Wales will be replaced by the Local Court (which will sit at various places throughout New South Wales). Accordingly, references in other Acts and instruments to “a Local Court” are replaced with references to “the Local Court” and references to the Local Court at a particular place are replaced with references to either the Local Court or the Local Court sitting at a particular place.
7. The 2007 Act provides that a reference to the **relevant registrar** of the Local Court is a reference to:

- (a) **when used in connection with a particular place, the registrar for that place, or**
  - (b) when used in connection with a particular function, the registrar authorised to exercise that function, or
  - (c) when used in connection with a particular place and a particular function, the registrar authorised to exercise that function at or in relation to that place, or
  - (d) when used in relation to particular proceedings, the registrar for the place at which the proceedings are being, or are to be, heard or (if they have been determined) the place at which the proceedings were determined.
8. The Bill updates references to registrars in other Acts and instruments in a similar manner. The 2007 Act provides that all proceedings in the Local Court are to be heard and determined by a Magistrate who is to constitute the Court. Various references in other Acts and instruments to the Local Court constituted by a Magistrate sitting alone or held before a Magistrate are therefore unnecessary and are removed. The Bill also makes other minor consequential amendments and statute law revision amendments. Note that a particular Act or instrument may be amended by more than one Schedule to this Bill.

## 9. Outline of provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and instruments specified in Schedule 1 as set out in that Schedule.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedules 2–7.

**Clause 5** provides for the repeal of the *Courts of Petty Sessions (Civil Claims) Further Amendment Act 1982*.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### Schedule 1 Amendment of Acts and instruments

**Schedule 1** amends various Acts and instruments for the purposes set out in the Overview.

### Schedule 2 Amendments replacing “a Local Court” with “the Local Court”

**Schedule 2** amends the provisions of the Acts and instruments specified by omitting references to “a Local Court” and replacing with references to “the Local Court”.

### Schedule 3 Amendments replacing “A Local Court” with “The Local Court”

**Schedule 3** amends the provisions of the Acts and instruments specified by omitting references to “A Local Court” and replacing with references to “The Local Court”.

### Schedule 4 Amendments replacing “a Local Court constituted by a Magistrate sitting alone” with “the Local Court”

**Schedule 4** amends the provisions of the Acts and instruments specified by omitting references to “a Local Court constituted by a Magistrate sitting alone” and replacing with references to “the Local Court”.

**Schedule 5 Amendments replacing “a Local Court constituted by a Magistrate” with “the Local Court”**

**Schedule 5** amends the provisions of the Acts and instruments specified by omitting references to “a Local Court constituted by a Magistrate” and replacing with references to “the Local Court”.

**Schedule 6 Amendments replacing “a Local Court held before a Magistrate sitting alone” with “the Local Court”**

**Schedule 6** amends the provisions of the Acts and instruments specified by omitting references to “a Local Court held before a Magistrate sitting alone” and replacing with references to “the Local Court”.

**Schedule 7 Amendments replacing “Local Courts Act 1982” with “Local Court Act 2007”**

**Schedule 7** amends the provisions of the Acts and instruments specified by omitting references to “*Local Courts Act 1982*” and replacing with references to “*Local Court Act 2007*”.

## Issues Considered by the Committee

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

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

10. The Committee notes that the proposed Act is to commence on a day or days to be appointed by proclamation. This may delegate to the government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

**11. Although there may be good reasons why such discretion is required such as allowing time for appropriate administrative arrangements to be made, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent, is an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 8. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (PROSECUTIONS) BILL 2007

Date Introduced:	13 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Phil Koperberg MP
Portfolio:	Minister for Climate Change Environment and Water

### Purpose and Description

1. The purpose of the Bill is to amend the *Prevention of Cruelty to Animals Act 1979* to specify the persons and organisations authorised to institute proceedings under the Act.

### Background

2. At present, any person can institute a prosecution under the *Prevention of Cruelty to Animals Act 1979*.<sup>9</sup> According to the Agreement in Principle speech, private parties have initiated a number of prosecutions in recent years, none of which have been successful.<sup>10</sup> The Bill seeks to reduce the associated cost on the judicial system in NSW.
3. In addition, there are concerns that permitting private parties to commence proceedings may encourage trespass. There are potential repercussions regarding biosecurity. According to the Agreement in Principle speech:

Currently, only authorised inspectors may enter and inspect premises to investigate reported breaches of animal cruelty. It follows that those inspectors are in the best position to collect appropriate evidence and commence proceedings if that evidence reveals an offence has been committed. There has been significant concern that the *Prevention of Cruelty to Animals Act* may encourage trespass and raise biosecurity concerns because private individuals are currently permitted to commence proceedings for an offence under the Act. However, private individuals are not authorised to enter and inspect premises without consent from the owner of those premises. In addition, the gathering of or attempt to gather evidence by such individuals without authority has the potential to raise significant biosecurity concerns.<sup>11</sup>

### The Bill

4. The Bill is to commence on 1 January 2008.
5. The Bill proposes to insert s 34AA into the *Prevention of Cruelty to Animals Act 1979* to specify that only the following are authorised to institute proceedings for an offence under the Act:

<sup>9</sup> Section 14 of the *Criminal Procedure Act 1986* states: 'A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons'.

<sup>10</sup> M J Daley MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 13 November 2007.

<sup>11</sup> M J Daley MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 13 November 2007.

- an approved charitable organisation (this currently includes the NSW RSPCA and the NSW Animal Welfare League);
- an authorised inspector;
- a police officer;
- the Minister or the Director-General of the Department of Primary Industries;
- a person with the written consent of the Minister or that Director-General; or
- any other person or body prescribed by the regulations for that purpose.

## **Issues Considered by the Committee**

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

***The Committee makes no further comment on this Bill.***

## 9. RICE MARKETING AMENDMENT BILL 2007

Date Introduced:	16 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Nathan Rees MP
Portfolio:	Emergency Services, Water Utilities

### Purpose and Description

1. This Bill amends the *Rice Marketing Act 1983* with respect to the constitution and procedure of the Rice Marketing Board and the sale or supply of rice outside Australia.
2. This aims to improve the international marketing of NSW rice by clarifying the provisions for the operation of a single desk for NSW rice exports and requirements to ensure the independence of the Rice Marketing Board.

### Background

3. This Bill is cognate with the *Agricultural Industry Services Amendment Bill 2007*.
4. Commercial rice crops were first grown in NSW in 1924 in the Riverina district. The industry now employs over 8,000 people and produces over 1 million tones of rice. Exports go to 75 countries and have an annual value of over \$400 million. However, the current drought is having a serious impact on the industry.
5. The Rice Marketing Act provides for the establishment and activities of marketing boards for NSW commodities. The amendments in 2005 provided for the deregulation of the NSW domestic rice market. This had resulted from a national competition policy review of the Act and was implemented through the authorised buyer permits. That review supported the retention of a single desk for the export of NSW rice. It supported the principle of having only 1 approved buyer to sell NSW rice outside of Australia.
6. The Rice Marketing Board issues the permits for those seeking to trade NSW rice on Australia's domestic market. A condition of the permits is that the permit holder cannot sell this rice to anyone outside Australia.
7. The amendments to the Rice Marketing Act, which deregulated the market, have been in operation for 12 months. Further amendments are now required to ensure that the intent of the national competition policy review with respect to marketing NSW rice overseas is clear. The current legislation does not specifically provide for a single export desk so the Board maintains this administratively, by granting a preferred buyer the exclusive approval to sell NSW rice outside Australia. The advantage of the single export desk is the strong negotiating power on world markets, which it gives to rice growers, without the cost to the Australian taxpayer.



8. This Bill will make it clear that the Board can give an undertaking to an authorised buyer it approves as an exporter that it will be the only authorised approved buyer. The Bill will provide that no other authorised buyer can be given approval to sell rice outside Australia when such an undertaking is in place.
9. At present, it is not an offence for a person who is not the appointed export buyer to sell or supply NSW rice outside Australia. The proposed amendments will clarify this by making it an offence for anyone who is not appointed as the preferred export buyer to sell NSW rice outside of Australia.
10. The amendments will also enhance the independence of the Rice Marketing Board by increasing by the number of independent board members to 2. The Board will then have 3 industry-elected members and 4 independent members. This aims to overcome any perception of conflicts of interest. The chairperson will also be appointed from the independent members once the term of the current chair expires.

## The Bill

11. The object of this Bill is to amend the *Rice Marketing Act 1983* (***the principal Act***) so as:
  - (a) to prevent the Rice Marketing Board (***the Board***) from giving an approval for the sale or supply of rice to persons outside Australia to more than one authorised buyer of rice (so preserving a “single desk” policy), and
  - (b) to create an offence (with a maximum penalty of 2,000 penalty units) of selling or supplying rice to persons outside Australia, and
  - (c) to increase the membership of the Board from 5 to 7 members by providing for an additional 2 members to be nominated by the Minister, and
  - (d) to require the Chairperson of the Board to be elected from among the Board’s nominated members, and
  - (e) to increase, from 1 to 2, the number of nominated members required for a quorum of the Board, and
  - (f) to enable the Minister to extend the period within which the Board’s annual meeting must be held, and
  - (g) to include a provision requiring the principal Act to be reviewed at the end of 2 years after the date of assent to the proposed Act.

## 12. Outline of provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the *Rice Marketing Act 1983* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### **Schedule 1 Amendments**

**Schedule 1 [3]** amends section 51A of the principal Act so as to give effect to the object referred to in paragraph (a) above.

**Schedule 1 [4]** inserts proposed section 51B into the principal Act so as to give effect to the object referred to in paragraph (b) above. **Schedule 1 [6]** amends section 156 of the principal Act to ensure that the maximum penalty that a Local Court can impose for an offence under the new section is 200 penalty units.

**Schedule 1 [1]** amends section 11 of the principal Act so as to give effect to the object referred to in paragraph (c) above. **Schedule 1 [2]** omits section 12 of the principal Act as a consequence of that amendment.

**Schedule 1 [9]** inserts proposed clause 8 into Schedule 6 to the principal Act so as to give effect to the object referred to in paragraph (d) above.

**Schedule 1 [8]** amends clause 2 of Schedule 3 to the principal Act so as to give effect to the object referred to in paragraph (e) above.

**Schedule 1 [5]** amends section 127 of the principal Act so as to give effect to the object referred to in paragraph (f) above.

**Schedule 1 [7]** inserts a new section 165 into the principal Act so as to give effect to the object referred to in paragraph (g) above.

### **Issues Considered by the Committee**

- |  |
|--|
| 13. <b>The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987.</i></b> |
|--|

***The Committee makes no further comment on this Bill.***

## 10. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2007

Date Introduced:	14 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier, Citizenship

### Purpose and Description

1. This Bill repeals certain Acts and amends certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.
2. The Agreement in Principle Speech refers to some of the amendments included in Schedule 1. It amends the *Hunter Water Act 1991* by inserting a standard provision that allows penalty notices to be issued in respect of offences under that Act which are prescribed penalty notice offences so the Hunter Water would have the same power to issue penalty notices as Sydney Water. A consequential amendment is made to the *Fines Act 1996* to provide for the enforcement of such penalty notice.
3. The Agreement in Principle Speech also refers to Schedule 1 amendment to the *Police Integrity Commission Act 1996*, to extend the time within which proceedings may be commenced against a person for not complying with a notice to provide evidence to the Police Integrity Commission. This period will be extended from 6 months to 3 years, which is consistent with the time limits currently applicable to a similar offence under the Act. For both of these offences, an early prosecution may prejudice the Commission's ongoing investigations. The proposed amendments are transitional provisions that make it clear that the proposed amendment to section 141 does not apply in respect of alleged offences under section 26 that happened prior to the commencement of the proposed amendments.
4. Another amendment to be made by Schedule 1 is to the *Local Government Act 1993* to enable reports on investigations of local councils authorised by the Director General under that Act to be tabled before Parliament when Parliament is not sitting. Similar provision is made in relation to reports on public inquiries into local councils under that Act.
5. Schedule 1 also make amendments to the *Stock Diseases Act 1923* by abolishing the Board of Tick Control. It will be replaced by an advisory committee, which was recommended in the Tick Fever Inquiry Report (June 2005) and has been subject to public consultation. A number of consequential amendments to that Act and other legislation are made.
6. Schedule 1 amends the *Growth Centres (Development Corporations) Act 1974* to enable members of a development corporation to participate in meetings by telephone or other electronic communication methods, which is also consistent with current provisions in Commonwealth and State legislation.

7. Schedule 2 contains matters of statute law revision that the Parliamentary Counsel considered as appropriate, including amendments resulting from the enactment or repeal of other legislation, those correcting duplicated numbering and also those to update terminology.
8. Schedule 3 contains statute law revision amendments that are consequential on a new edition of *Planning for Bush Fire Protection* by the NSW Rural Fire Service, to update references and use of certain terms, various environmental planning instruments.
9. Schedule 4 transfers provisions from amending Acts into the relevant principal Acts. When the remaining provisions of the amending Acts are spent, schedule 5 will repeal those amending Acts.

## Background

10. This Bill deals with minor amendments, in the form of previous bills in statute law revision.
11. It repeals a large number of Acts that are no longer necessary. Schedule 1 contains policy changes of a minor nature that are considered as not requiring the introduction of a separate amending bill. Schedule 1 contains amendments to 24 Acts and instruments.
12. Schedule 5 repeals 158 Acts that are spent or of no use. Due to the large number of repealed Acts, the schedule also contains a power for the Governor, by proclamation, to revoke the repeal of any Act repealed by this Bill, as an added precautionary step. Schedule 6 contains general savings, transitional and other provisions.

## The Bill

13. The objects of this Bill are:
  - (a) to make minor amendments to various Acts (Schedule 1), and
  - (b) to amend certain other Acts and instruments for the purpose of effecting statute law revision (Schedules 2 and 3), and
  - (c) to transfer certain savings, transitional and other provisions of ongoing effect from some amending Acts into the relevant Principal Act, so as to permit the repeal of otherwise obsolete amending Acts (Schedule 4), and
  - (d) to repeal certain Acts (Schedule 5), and
  - (e) to make other provisions of a consequential or ancillary nature (Schedule 6).

### 14. Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act.

**Clauses 3 and 5** are machinery provisions that give effect to the Schedules to the proposed Act containing amendments and savings, transitional and other provisions.

**Clause 4** gives effect to the Schedule of repeals.

**Clause 6** makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

**Clause 7** provides for the repeal of sections 3 and 4 of, and Schedules 1–5 to, the proposed Act after all the amendments made by the proposed Act have commenced. Once the

amendments have commenced, those provisions will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending provision does not affect the amendments made by that provision.

### **Schedule 1 Minor amendments**

**Schedule 1** makes amendments to the following Acts and instruments:

*Contaminated Land Management Act 1997* No 140

*Conveyancing Act 1919* No 6

*Criminal Assets Recovery Act 1990* No 23

*Crown Lands Act 1989* No 6

*Crown Lands (Continued Tenures) Act 1989* No 7

*Crown Lands (Continued Tenures) Regulation 2006*

*Fair Trading Act 1987* No 68

*Fines Act 1996* No 99

*Firearms Act 1996* No 46

*Freedom of Information Regulation 2005*

*Government and Related Employees Appeal Tribunal Act 1980* No 39

*Growth Centres (Development Corporations) Act 1974* No 49

*Home Building Act 1989* No 147

*Hunter Water Act 1991* No 53

*Local Government Act 1993* No 30

*Parliamentary Electorates and Elections Amendment Act 2006* No 68

*Police Integrity Commission Act 1996* No 28

*Real Property Act 1900* No 25

*Residential Parks Act 1998* No 142

*Security Industry Act 1997* No 157

*Stock Diseases Act 1923* No 34

*Stock Diseases Regulation 2004*

*Succession Act 2006* No 80

*Western Lands Act 1901* No 70

The amendments to each Act or instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 1.

### **Schedule 2 Amendments by way of statute law revision**

**Schedule 2** amends certain Acts and instruments for the purpose of effecting statute law revision. The amendments to each Act and instrument are explained in detail in the explanatory note relating to the Act or instrument concerned set out in Schedule 2.

### **Schedule 3 Amendments consequential on publication of Planning for Bush Fire Protection**

**Schedule 3** amends certain environmental planning instruments for the purpose of effecting statute law revision, consequent on the preparation in December 2006 of a new edition of *Planning for Bush Fire Protection* by the NSW Rural Fire Service in co-operation with the Department of Planning.

### **Schedule 4 Amendments transferring provisions**

**Schedule 4** transfers into the relevant Principal Act a number of savings, transitional and other provisions of ongoing effect contained in certain amending Acts, the other provisions of which have been incorporated into reprints or electronic versions of the Acts being

amended or are spent. The removal of these provisions from the amending Acts permits the repeal (by Part 4 of Schedule 5 to the proposed Act) of those Acts.

### **Schedule 5 Repeals**

**Schedule 5** repeals a number of Acts.

Part 1 of the Schedule repeals Acts that are redundant.

Part 2 of the Schedule repeals Acts that contain only amendments, or amendments and repeals, that have commenced.

Part 3 of the Schedule repeals Acts that contain only amendments, or amendments and repeals, that have commenced, and savings, transitional or other provisions, that are redundant.

Part 4 of the Schedule repeals Acts that contain only amendments that have commenced and savings, transitional or other provisions the operation of which is preserved by amendments proposed to be made by Schedule 4 to the Bill.

Section 30 (2) of the *Interpretation Act 1987* ensures that the repeal of an Act does not affect the operation of any savings, transitional or validation provision contained in the Act, and that the repeal of an amending Act does not affect any amendment made by the Act. The Acts or instruments that were amended by the Acts being repealed are available electronically at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

### **Schedule 6 General savings, transitional and other provisions**

**Schedule 6** contains savings, transitional and other provisions of a more general effect than those set out in Schedule 1. The Schedule includes a new provision allowing the Governor, by proclamation, to revoke the repeal of any Act or instrument or the provision of any Act or instrument repealed by the proposed Act. The purpose of each provision is explained in detail in the explanatory note relating to the provision concerned set out in the Schedule.

## **Issues Considered by the Committee**

15. Schedule 1 makes amendments to the *Succession Act 2006*. This makes changes to the law of wills in NSW in order to achieve consistency of succession laws across Australia. Adviser from the office of the Attorney General and Minister for Justice explained the technical amendments in this Bill are to activate the operation of the legislation *Succession Act 2006*, which has already been passed. The delay in commencement was necessary for educating the legal sector and the community. The adviser also confirmed that the amendments were not controversial and had been developed in consultation with an implementation committee of expert legal practitioners, including representatives from the NSW Law Society.
16. The Committee notes that there are no issues identified under s 8A(1)(b) of the *Legislation Review Act 1987*.

<p>17. <b>The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</b></p>
---

***The Committee makes no further comment on this Bill.***

# 11. SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT BILL 2007

Date Introduced:	13 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Nathan Rees MP
Portfolio:	Minister for Water Utilities

## Purpose and Description

1. The purpose of the Act is to amend the *Sydney Water Catchment Management Act 1998* to deal with the following:
  - (a) the matters to be contained in the operating licence granted to the Sydney Catchment Authority;
  - (b) the functions of the Sydney Catchment Authority, including its reporting functions;
  - (c) arrangements for drawing water;
  - (d) the requirement for the Sydney Catchment Authority to enter into a memorandum of understanding with the Water Administration Ministerial Corporation;
  - (e) the conduct of catchment audits and the use of the results of such audits;
  - (f) the repeal of certain orders declaring lands to be special areas;
  - (g) enforcement powers, including power to direct persons to take corrective or preventive action, powers to require answers and information and powers of entry;
  - (h) penalties for illegal diversion of water and discharge of substances into works and for offences under the regulations;
  - (i) new offences and proceedings for offences; and
  - (j) evidentiary provisions.

## Background

2. The Sydney Catchment Authority was established by the *Sydney Water Catchment Management Act 1998*.
3. A statutory review of the *Sydney Water Catchment Management Act 1998* was completed in 2004. According to the Agreement in Principle speech, the review identified:

...useful amendments, including allowing for more effective and efficient regulatory powers for the Catchment Authority, and for improved management of the audit of Sydney's drinking water supply catchments.

The review further proposed important administrative improvements, including clarifying that the catchment authority has clear statutory powers to create new assets; removing the requirement for the catchment authority's operating licence to define all the catchment authority functions as specified in all relevant acts, instead concentrating on only those that are relevant to key Acts; removing the requirement for the catchment authority to enter into a memorandum of understanding with the Water Administration Ministerial Corporation as the catchment authority now has a water management licence; and finally, de-proclaiming those special areas that no longer have operational purposes for the catchment authority.<sup>12</sup>

## The Bill

### Functions of Sydney Catchment Authority

4. The Bill proposes to amend s 15 of the *Sydney Water Catchment Management Act 1998* to remove the requirement that the operating licence granted to the Sydney Catchment Authority define all its functions.
5. The Bill proposes to amend s 25 so that, unless expressly provided by *Sydney Water Catchment Management Act*, nothing in the operating licence limits the requirements imposed by or under any other Act or law regarding the provision, construction, operation, management or maintenance of any system or service by the Sydney Catchment Authority.
6. The Bill proposes to amend s 26 regarding the terms and conditions of the operating licence to delete the requirement that the Sydney Catchment Authority compile indicators on the ecological health of the catchment area and of the impact of the Authority's activities on the catchment area. A new requirement is inserted that the Sydney Catchment Authority compile indicators of the direct impact of its activities on the environment, including the impact of energy used and waste generated.
7. The Bill proposes to amend s 16 to add the provision or construction of systems or services for supplying water and the installation of new works to the specific functions of the Sydney Catchment Authority.

### Powers of entry

8. Section 17 of the Act provides the Sydney Catchment Authority with such functions as are necessary or convenient to carry out any concurrence or other role conferred or imposed on it by or under any environmental planning instrument in relation to a catchment area. The Bill proposes to amend s 17 to add that the Sydney Catchment Authority has and may exercise the powers conferred on a council under Division 1A of Part 6 of the *Environmental Planning and Assessment Act 1979* for the purpose of exercising its functions under s 17. Certain powers are also conferred on authorised officers.

### Arrangements for drawing water

9. The Bill proposes to insert s 21A to provide arrangements for drawing water. It stipulates that subject to the operating licence the Sydney Catchment Authority has control over all water in its water storages or pipelines and this water is available for supply. The Sydney Catchment Authority may enter into an arrangement with any person to permit the drawing or taking of water from the water storages or pipelines.

---

<sup>12</sup> P C Koperberg MP, Legislative Assembly *Hansard*, 13 November 2007.



**Catchment audits**

10. The Bill proposes to insert new sections 42 to 42D. These require the Minister to appoint a public authority or other person to develop and approve catchment health indicators of the catchment health of the catchment area. An auditor must also be appointed to conduct an audit of the catchment health of the catchment area every three years and present a report on that audit to the Minister.
11. The Sydney Catchment Authority is required to evaluate the findings of a catchment audit to the extent to which they relate to its activities and risks to water quality. The relevant findings of a catchment audit are to be incorporated into the Sydney Catchment Authority's risk framework as well as programs and activities relating to catchment management. The Authority is required to report to the Minister on its progress to achieve improvements in catchment health, to prevent degradation of existing catchment health and to maintain existing catchment health having regard to the findings of the most recent catchment audit.

**Enforcement powers**

12. The Bill proposes to insert Parts 6A and 6B into the Act. Part 6A sets out the provisions relating to catchment correction notices and catchment protection notices. Part 6B is concerned with the requirements to provide information.
13. Proposed s 62B provides that the Sydney Catchment Authority may, by a catchment correction notice, direct an occupier of land on or from which the Sydney Catchment Authority reasonably suspects that a targeted activity has been or is being carried out and/or direct a person who is reasonably suspected by the Sydney Catchment Authority of carrying out or having carried out a targeted activity, to take the corrective action specified in the notice. Corrective action may include:
  - action to prevent, minimise, remove, disperse, destroy or mitigate any adverse impact on water quality or catchment health resulting or likely to result from the activity;
  - ascertaining the nature and extent of the targeted activity and of the actual or likely resulting adverse impact on water quality or catchment health;
  - preparing and carrying out a remedial plan of action.
14. A 'targeted activity' is defined as 'an activity in a special area or controlled area that has, or is likely to have, caused damage to, or detrimentally affected, the quality of any water, or the catchment health of any land, in the area concerned'.
15. Proposed s 62C empowers the Sydney Catchment Authority to direct a public authority to take corrective action if the Sydney Catchment Authority reasonably suspects that a targeted activity has been carried out or is being carried out.
16. A public authority is authorised to take such corrective action as considered necessary without a direction from the Sydney Catchment Authority if it reasonably suspects that a targeted authority has been or is being carried out.

17. A person who fails to comply with a catchment correction notice without reasonable excuse is guilty of an offence.
18. Proposed s 62F empowers the Sydney Catchment Authority if it reasonably suspects that a targeted activity has been, will be or is being carried out on any land in a special area or a controlled area, to direct the occupier of the land and/or the person carrying on the activity to take such action as specified in the notice to ensure that either the targeted activity is not commenced, is no longer carried on, or if the targeted activity is permitted to be carried on in future, it is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in the special area or controlled area. Such action may include:
  - ceasing to carry on or not commencing to carry on an activity;
  - carrying on an activity in a particular manner;
  - carrying on an activity only during particular times;
  - preparing and carrying out a plan of action to control, prevent or minimise any damage to, or detrimental effect on, the quality of any water, or the catchment health of any land, in the special area or controlled area.
19. A person who fails to comply with a catchment protection notice is guilty of an offence.
20. A person served with a catchment protection notice has 21 days to appeal to the Land and Environment Court against the notice.
21. Proposed s 62Q makes it an offence to wilfully delay or obstruct a person carrying out any action in compliance with a catchment correction notice or a catchment protection notice.
22. Proposed s 62R empowers an authorised officer to require a person suspected on reasonable grounds of having knowledge of matters in respect of determining whether there has been compliance with or a contravention of the Act or regulations or a notice issued under the Act to answer questions regarding those matters. It is an offence to fail or refuse to comply or to give an answer that is false or misleading in a material particular.
23. Proposed s 62S empowers the Sydney Catchment Authority to require a person, by written notice, to furnish such information and/or records as required in relation to determining whether there has been compliance with or a contravention of the Act, regulations or a notice issued under the Act. Failure or refusal to comply, or the provision of false or misleading information or records, is an offence.
24. Proposed s 62U empowers an authorised officer to require a person suspected on reasonable grounds of offending to state his or her full name and residential address. The authorised officer may require the driver of a motor vehicle in a catchment area to produce his or her driver licence and state his or her full name and residential address. Failure or refusal to comply, or providing a false name, address or driver's licence, is an offence.

25. Proposed s 62V enables the Sydney Catchment Authority or an authorised officer, should it suspect on reasonable grounds that the driver of a motor vehicle has committed an offence, to require the owner of the vehicle, or the person in whose name it is registered, or the person having custody of the vehicle, to provide the name and residential address of the driver. They are also empowered to require any other person to give any information which may lead to the identification of the driver. Failure or refusal to comply is an offence. However, a defence is provided, if the defendant proves that he or she did not know and could not with reasonable diligence ascertain the name or residential address of the driver.
26. Proposed s 62W provides that a person is not guilty of an offence of failing to comply with a requirement to furnish records or information or to answer a question unless he or she was warned that the failure to comply is an offence. It also makes it clear that a person is not excused from the requirement to furnish records or information or answer a question on grounds that it might incriminate the person. However, the proposed section makes it clear that such information is not admissible in evidence against the person in criminal proceedings if:
- the person objected at the time to doing so on the ground that it might incriminate the person; or
  - the person was not warned on the relevant occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

### **Offences and increases in maximum penalties for offences**

27. The Bill proposes to substantially increase the maximum penalties that apply to a number of offences. The penalty for illegally diverting water and for discharging a substance into works owned or controlled by the Sydney Catchment Authority increases from 200 penalty units (currently \$22,000) to \$250,000 and \$30,000 each day the offence continues in the case of a corporation. The applicable penalty in the case of an individual increases from 100 penalty units (currently \$11,000) to \$120,000 and \$15,000 each day the offence continues.
28. The Bill proposes to insert sections 64A and 64B into the Act. Section 64A provides that it is an offence for a person to obstruct, hinder or interfere with an authorised officer in the exercise of the officer's functions or to impersonate an authorised officer. The maximum penalty is \$120,000 in the case of an individual and \$250,000 in the case of a corporation.
29. Proposed s 64B makes it clear that if a corporation contravenes a provision of the Act or regulations, each director of the corporation or person concerned in the management of the corporation is taken to have contravened that provision unless the person satisfies the court that:
- the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - the person, if in such a position, used all due diligence to prevent the contravention by the corporation.

30. The Bill also increases the maximum penalties that apply to offences contained in the regulations from 200 to 400 penalty units in the case of an offence by a corporation and from 100 to 200 penalty units in any other case: schedule 1[33] and [34].

### **Proceedings for offences**

31. Proceedings for an offence against the Act or regulations are to be disposed of summarily before a Local Court or the Land and Environment Court. The maximum penalty that may be imposed by the Local Court is 200 penalty units.

### **Evidentiary matters**

32. The Bill proposes to insert Part 7A into the Act to provide for evidentiary matters. Proposed s 69A stipulates that in any proceedings, the onus of proving that a person had a reasonable or lawful excuse lies with the defendant.

### **Authorised officers**

33. The Bill proposes to insert Part 7B into the Act regarding authorised officers. Proposed s 69F provides that the Sydney Catchment Authority may appoint any person as an authorised officer. The authorisation of a person as an authorised officer may be given generally or subject to conditions, limitations, restrictions, or for limited purposes.

## **Issues Considered by the Committee**

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

#### **Self-incrimination: proposed Part 6B – requirements to provide information**

34. Part 6B contains a number of requirements that a person provide information and or records to authorised officers or the Sydney Catchment Authority. In a number of cases these requirements apply where the person is suspected on reasonable grounds of committing or having committed an offence. It is an offence to refuse or fail to comply with these requirements.
35. Proposed s 62W stipulates that a person is not excused from a requirement under Part 6B to furnish records or information or to answer a question on the ground that it might incriminate the person.
36. The right against self-incrimination (or right to silence) is well recognised both at common law and in international law. Article 14(3)(g) of the *International Covenant on Civil and Political Rights* provides that a person has the right 'not to be compelled to testify against himself or to confess guilt'.
37. However, the right against self-incrimination needs to be balanced with the public benefit that may flow from obtaining the information. However, any abrogation of the right against self-incrimination should not be more than is justified in the circumstances.
38. There are some safeguards contained in the Bill as it limits the use of information so obtained. Section 62W(3) provides that any information furnished or answer given is not admissible in evidence against the person in criminal proceedings if:

- the person objected at the time to doing so on the ground that it might incriminate the person; or
  - the person was not warned on the relevant occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
39. However, s 62W(3) does not apply to criminal proceedings for an offence under Part 6B. Nor is there any suggestion that it applies to civil proceedings.

40. **The Committee will always be concerned if a Bill removes or restricts a person's right against self-incrimination. The Committee notes that the right against self-incrimination is enshrined in the *International Covenant on Civil and Political Rights*.**
41. **However, the Committee acknowledges that in some cases this right may be modified if there is a significant public interest in obtaining the information and where the use of that information is restricted. The Committee accepts that there is a strong public interest in ensuring the protection of catchment areas and the need to control, prevent, minimise or remove any damage to, or detrimental effect on, the quality of water and/or catchment health.**
42. **The Committee notes that there are some safeguards in the Bill regarding the use of any information required by authorised officers or the Sydney Catchment Authority that may incriminate the person providing that information. However, it is questionable whether the limitation on the way in which this information may be used is adequate.**
43. **Accordingly, the Committee asks Parliament to consider whether the modification of the right against self-incrimination contained in the Bill unduly trespasses on the rights and liberties of individuals.**

**Excessive punishment – substantial penalties: proposed sections 62R, 62S, 63, 64, 64A**

44. The Bill applies substantial penalties to a number of offences. The maximum penalty that may be imposed regarding the following offences is \$250,000 in the case of a corporation (plus \$30,000 for each day the offence continues) and \$120,000 in the case of an individual (plus \$15,000 for each day the offence continues):
- failing or refusing to comply with a requirement by an authorised officer to answer questions, or if the information provided is false or misleading: proposed s 62R;
  - failing or refusing to comply with a requirement by the Sydney Catchment Authority to provide certain information and records, or if the information provided is false or misleading: proposed s 62S;
  - the illegal diversion of water: proposed amendment to s 63; and
  - discharging into works; proposed amendment to s 64.

45. The obstruction or impersonation of an authorised officer attracts a maximum penalty of \$250,000 in the case of a corporation and \$120,000 in the case of an individual: proposed s 64A.
46. The Committee notes that there is a strong public interest in ensuring compliance with the Act. The threat of substantial penalties may be an effective deterrence. However, the Committee highlights that there is no difference, for example, between the maximum penalty attached to a failure to answer questions by an authorised officer and that applicable to the unauthorised discharging of a substance into works.

- 47. The Committee notes that there is a significant public interest in ensuring the health of catchment areas. It acknowledges that the existence of significant penalties may encourage compliance by serving as an effective deterrence to potential offenders.**
- 48. However, the Committee highlights that similar penalties apply to a range of offences. Accordingly, the Committee asks Parliament to consider whether the maximum penalties applicable to certain offences are excessive.**

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

#### **Commencement by proclamation: Clause 2**

49. Clause 2 of the Bill specifies that it is to commence on proclamation. This may delegate to the Government the power to commence the Act on whatever day it chooses or not at all. While there may be good reasons why such discretion is required, the Committee considers that, in some circumstances, this may give rise to an inappropriate delegation of legislative power.

- 50. Although there may be good reasons why such discretion is required, the Committee has concerns about commencement by proclamation and asks Parliament to consider whether the Bill commencing by proclamation rather than on assent is an inappropriate delegation of legislative power.**

***The Committee makes no further comment on this Bill.***

## 12. WINE GRAPES MARKETING BOARD (RECONSTITUTION) AMENDMENT BILL 2007

Date Introduced:	16 November 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Nathan Rees MP
Portfolio:	Emergency Services, Water Utilities

### Purpose and Description

1. This Bill amends the *Wine Grapes Marketing Board (Reconstitution) Act 2003* in relation to contracts for the delivery of MIA wine grapes.
2. The amendments extend the operations of the *Wine Grape Marketing Board (Reconstitution) Act 2003* and amend its other provisions. The Act is due to expire on 1 January 2008 and the proposed amendments will extend the Act until 1 January 2010.
3. The main provision which will be extended by this Bill is the power for the board to set default terms and conditions of payments for wine grape sales that are not subject of a complying contract. These sales are known as 'spot market' sales. The transitional period has almost finished without the expected facilitated grower and winery price negotiations. By extending the operation of the Act, it will give more time for grower and winery negotiations to develop.

### Background

4. This Bill is cognate with the *Agricultural Industry Services Amendment Bill 2007*.
5. The current legislation was developed from a 2001 national competition review. Under the legislation, the Wine Grapes Marketing Board was granted powers to facilitate a transition from a regulated market to a more competitive market. This involved a move from centralised vesting and price controls to where prices were individually negotiated by industry participants.
6. A voluntary national code is also being developed between the Winemakers Federation of Australia and Wine Grape Growers Australia. This code aims to address contractual issues between growers and winemakers. The Agreement in Principle speech stated that if the voluntary code is in place before the proposed revised expiry date of the Act, the need for the legislation could be reconsidered at that time.
7. The legislation provides for price schedules to be given to the board by purchasers of wine grapes. The schedules are currently used for pricing wine grapes that are sold outside an appropriate, or complying contract in spot sales. The proposed amendment will remove the need for wineries to submit price schedules to the board for spot sales. This provision was intended to improve price information for growers,

however, in practice, it proved to be inflexible and resulted in adverse outcomes for growers. The indicative prices were lower than they might have been as wineries were cautious to avoid setting too high a price benchmark early in the season.

8. The Agreement in Principle speech stated that both the wineries and the board support the removal of the requirement for wineries to submit price schedules to the board for spot sales. The prices can then go up or down as market conditions change. This amendment will result in the board no longer having the consequential power under section 9 of the Act to calculate an average price for wine grapes in the Murrumbidgee Irrigation Area sold without a price schedule having been made available. The amendment aims to allow for more competition, and to promote the development of marketing and negotiation skills by growers, in line with the original intention of the Act. This will also make use of contract sales arrangements, and reduce the regulatory red tape and compliance costs in the wine industry.

## The Bill

9. The object of this Bill is to amend the Wine Grapes Marketing Board (Reconstitution) Act 2003 (**the principal Act**) so as:
- (a) to omit a provision of that Act that requires persons accepting delivery of MIA wine grapes to establish price schedules governing the payments they make in relation to such deliveries, and
  - (b) to omit a provision of that Act that guarantees wine growers minimum prices for such deliveries, and
  - (c) to postpone the date of repeal of that Act from 1 January 2008 until 1 January 2010.

### 10. Outline of provisions

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

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

**Clause 3** is a formal provision that gives effect to the amendments to the *Wine Grapes Marketing Board (Reconstitution) Act 2003* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### Schedule 1 Amendments

#### Price schedules

**Schedule 1 [3]** omits section 4 of the principal Act, a section that deals with the provision of price schedules to the Wine Grapes Marketing Board (**the Board**).

**Schedule 1 [6]** omits section 7 of the principal Act, a section that prohibits a person from accepting deliveries of MIA wine grapes unless a price schedule has been provided to the Board.

**Schedule 1 [4]** amends section 5 of the principal Act so as to clarify that the Board's power to set terms and conditions of payment for deliveries of MIA wine grapes does not extend to setting prices.

Abolition of minimum prices



**Schedule 1 [8]** omits section 9 of the principal Act, a section that sets minimum prices for deliveries of MIA wine grapes. Minimum prices are currently set by reference to price schedules (where price schedules have been provided) or by reference to average prices for similar deliveries on the same day (where price schedules have not been provided).

#### **Repeal of Act**

**Schedule 1 [11]** amends section 26 of the principal Act so as to postpone the date of its repeal from 1 January 2008 until 1 January 2010.

#### **Other matters**

**Schedule 1 [12]** substitutes Schedule 1 to the principal Act. The current Schedule 1, which is now spent, contains the original text of what is now the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003*. The new Schedule 1 enacts specific provisions of a savings or transitional nature, and enables the regulations to make further such provisions, consequent on the enactment of the proposed Act.

**Schedule 1 [1], [2], [5], [7], [9] and [10]** make minor, consequential or ancillary amendments.

## **Issues Considered by the Committee**

<p>11. The Committee has not <i>identified any issues under s 8A(1)(b) of the Legislation Review Act 1987</i>.</p>
--

***The Committee makes no further comment on this Bill.***

## SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

### 13. GUARDIANSHIP AMENDMENT BILL 2007

#### Ministerial Correspondence

Date Introduced:	30 May 2007
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Kristina Keneally MP
Portfolio:	Ageing and Disability Services

#### Background

1. The Committee reported on this Bill in its Legislation Review *Digest* 1 of 2007.
2. The Committee resolved to write to the Minister in relation to its concern that exempting the Guardianship Tribunal from providing formal written decisions in respect of certain decisions already made by the Court and applying the extension of the powers of the Registrar to pending proceedings trespasses upon a person's right to order his or her affairs in accordance with the current law. The Committee sought the Minister's advice as to why these matters are to have retrospective application.
3. The Committee also resolved to write to the Minister seeking further advice regarding the reasons for extending the functions that may be delegated to the Registrar. These functions include the ability to refuse to review certain orders and consenting to the withdrawal of an application to the Tribunal.
4. Finally, the Committee resolved to write to the Minister seeking advice as to why the Bill is to commence on proclamation rather than on assent and requesting that a likely timetable for commencement be indicated.

#### Minister's Reply

5. By letter dated 5 November 2007, the Minister replied to the Committee's concerns, stating:

The retrospectivity provisions do not interfere with a person's right to order his or her affairs in accordance with current law. There are no changes to the law which is being applied. Now the Registrar is able to make the relevant decisions as well as the Tribunal. A decision of the Registrar to refuse a request for a review is reviewable to the Tribunal, so the protection of rights is ensured. Parties still have the right to procedural fairness and a hearing on the issues which are being dealt with by the Registrar.

The Registrar dealing with preliminary and procedural matters increases flexibility and retrospectivity prevents the creation of two classes of matters, depending on the initiation date. There will be no difference in outcome, for example, where a Tribunal joins a party or the Registrar makes this decision. There is discretion for the Registrar or President to refer a matter to a Tribunal, rather than it being dealt with by a Registrar.

6. The Minister replied to the Committee's concerns about the extension of the functions of the Registrar by stating:

I am confident the safeguards in the guardianship legislation will be rigorously upheld in relation to the exercise of the Registrar's powers, which are exercised only at the discretion of the President. Particular matters can be referred to the Tribunal as appropriate.

Review rights are available for refusals of requested reviews. In addition there is always the opportunity for new applications to be made. No fees apply to applications and there are no limits on the number of applications which can be made in these matters.

The amendments bring the New South Wales Guardianship Tribunal into line with current case management practice in courts and comparable tribunals.

7. In relation to the Committee's concerns about commencement by proclamation, the Minister replied:

Commencement on proclamation was preferred to enable the Tribunal to put in place processes and systems to deal with changes. There was need, for example, to make amendments to publications and to undertake staff and member training.

## Committee's Response

- |   |
|---|
| 8. The Committee thanks the Minister for her reply. |
|---|



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATION REVIEW COMMITTEE

---

29 June 2007

The Hon Kristina Keneally MP  
Minister for Ageing, Minister for Disability Services  
Level 36 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister *Kristina*

### **GUARDIANSHIP AMENDMENT BILL 2007**

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

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

#### **Retrospectivity**

The Bill amends s 68(1C) of the *Guardianship Act 1987* to extend the circumstances in which formal written reasons for certain decisions made by the Guardianship Tribunal are not required. The Bill proposes to apply s 68(1C) to decisions made before the commencement of the amendment (as a consequence of proposed clause 14 of Schedule 3 of the *Guardianship Act 1987*). It also intends to apply the extension of the powers of the Registrar to applications made and proceedings pending upon the commencement of s 67C (as a consequence of proposed clause 15 of Schedule 3 of the *Guardianship Act 1987*).

As you highlighted in your Agreement in Principle speech, the jurisdiction and workload of the Guardianship Tribunal has significantly increased in recent years, with a subsequent desire to improve its efficiency.

However, the Committee is concerned that exempting the Tribunal from providing formal written decisions in respect of certain decisions already made by the Court and applying the extension of powers of the Registrar to proceedings pending on commencement interferes with a person's right to order his or her affairs in accordance with the current law.

*The Committee seeks your advice as to why it is necessary for these sections to apply retrospectively.*

### Functions of Registrar

The Bill inserts sections 67B to 67E into the *Guardianship Act 1987* which set out a number of functions that may be exercised by a Registrar. Whilst many of these appear to be of a procedural nature, they extend to the ability to refuse to review certain orders and permit a Registrar to consent to the withdrawal of an application to the Tribunal.

The Committee notes the potential for the personal rights and liberties of a person subject to an order to be adversely affected should the review of an order be inappropriately refused. The Committee further notes the particularly vulnerable position of many persons who are the subject of orders made by the Guardianship Tribunal.

It is acknowledged that a number of safeguards are included in the Bill. However, a number of the types of decisions that may be made by a Registrar are not reviewable. It is acknowledged that nothing prevents a person making a further application to the Tribunal.

As you identified in your Agreement in Principle speech, there is a need to improve the efficiency of the Guardianship Tribunal. However, the Committee is concerned that the allocation of these functions to a Registrar may weaken the safeguards currently found in the *Guardianship Act 1987*.

*The Committee seeks further advice and clarification regarding the reasons for the extent of functions to be delegated to the Registrar.*

### Commencement by proclamation

The *Guardianship Amendment Bill 2007* is to commence on proclamation rather than on assent.

The Committee accordingly seeks your response regarding:

1. *Why is the Guardianship Amendment Bill 2007 to commence on proclamation rather than on assent?*
2. *When is commencement likely to be proclaimed?*

Thank you for your attention to these matters.

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

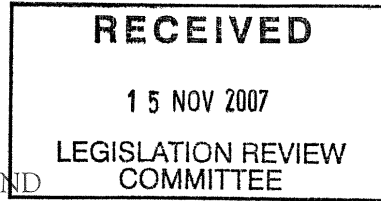
Yours sincerely



Allan Shearan MP  
Chair



MINISTER FOR AGEING AND  
MINISTER FOR DISABILITY SERVICES



Ref: M07/00354

- 5 NOV 2007

Mr Allan Shearan MP  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Shearan *Allan,*

I am writing in response to your request, as Chair of the Legislative Review Committee, for clarification of matters relating to the Guardianship Amendment Bill 2007. As you will be aware the Guardianship Amendment Act 2007 commenced on 1<sup>st</sup> August 2007.

I will address the issues as they are raised in your letter.

**Retrospectivity**

The Guardianship Act 1987 (the Act) provides that, in certain limited circumstances, Reasons for Decision need not be provided by the Tribunal unless requested or an appeal is lodged. Under the new legislative provisions this applies to the following decisions:

- adjournments made by the remaining members of a panel where one or more members are absent
- consent to minor medical treatment
- recognition of interstate orders
- procedural decisions
- reviews of decisions of the Registrar

These provisions are no different to the previous provisions relating to Reasons for Decisions for decisions made under S64(2) or S51A(1)(b), being all the procedural decisions now contained in Division 2 Part 6 of the Act. There are no significant changes other than the addition of a new category of decision – reviews of decisions of the Registrar – for which Reasons can be requested.

There has been no loss of rights for applicants. In relation to each class of decision:

- Interlocutory procedural decisions such as adjournments do not affect substantive rights. As was the case prior to the amendment, applicants in these matters have the right to request reasons.

- In practice, very few minor treatment decisions are made by the Tribunal and it is very rare for them to be made by the President or Deputy President. It is unlikely, therefore, that any pre-commencement decisions will be affected by the retrospective operation of these provisions.
- Interstate recognitions are mandatory on the application of a person's guardian or financial manager. There is no exercise of discretion or scope for objection to recognition. Registration of an interstate order has no substantive affect on rights. Reasons for decision are not relevant in this situation.
- Previously there was no power to review decisions of the Registrar, so there are no pre-commencement matters pending.

The retrospectivity provisions do not interfere with a person's right to order his or her affairs in accordance with current law. There are no changes to the law which is being applied. Now the Registrar is able to make the relevant decisions as well as the Tribunal. A decision of the Registrar to refuse a request for a review is reviewable to the Tribunal, so the protection of rights is ensured. Parties still have the right to procedural fairness and a hearing on the issues which are being dealt with by the Registrar.

The Registrar dealing with preliminary and procedural matters increases flexibility and retrospectivity prevents the creation of two classes of matters, depending on the initiation date. There will be no difference in outcome, for example, where a Tribunal joins a party or the Registrar makes this decision. There is discretion for the Registrar or President to refer a matter to a Tribunal, rather than it being dealt with by a Registrar.

#### **Functions of the Registrar**

I am confident the safeguards in the guardianship legislation will be rigorously upheld in relation to the exercise of the Registrar's powers, which are exercised only at the discretion of the President. Particular matters can be referred to the Tribunal as appropriate.

Review rights are available for refusals of requested reviews. In addition there is always the opportunity for new applications to be made. No fees apply to applications and there are no limits on the number of applications which can be made in these matters.


The amendments bring the New South Wales Guardianship Tribunal into line with current case management practice in courts and comparable tribunals.

#### **Commencement by Proclamation**

Commencement on proclamation was preferred to enable the Tribunal to put in place processes and systems to deal with changes. There was need, for example, to make amendments to publications and to undertake staff and member training.

I hope this information is of assistance in clarifying the issues you raise on behalf of the Committee.

Yours sincerely



The Hon Kristina Keneally MP



## Appendix 1: Index of Bills Reported on in 2007

	Digest Number
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	2
Agricultural Industry Services Amendment Bill 2007	7
Animals (Regulation of Sale) Bill 2007*	4
Anti-Discrimination Amendment (Breastfeeding) Bill 2007	3
Anti-Discrimination Amendment (Equal Opportunity in Public Employment) Bill 2007	7
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	1
APEC Meeting (Police Powers) Bill 2007	1
Appropriation Bill 2007; Appropriation (Parliament) Bill 2007; Appropriation (Special Offices) Bill 2007; Payroll Tax Bill 2007; State Revenue and Other Legislation Amendment (Budget) Bill 2007	1
Assisted Reproductive Technology Bill 2007	6
Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007	2
Bail Amendment Bill 2007	4
Biofuel (Ethanol Content) Bill 2007	2
Births, Deaths and Marriages Registration Amendment Bill 2007	1
Brothels Legislation Amendment Bill 2007	2
Channel 7 Former Epping Site Protection Bill 2007*	3
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	1
Children (Criminal Proceedings) Amendment (Publication of Names) Bill 2007	2
Christian Israelite Church Property Trust Bill 2007	3
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007	5
Climate Futures Bill 2007*	2
Coal Acquisition Legislation Repeal Bill 2007	6
Commission for Children and Young People Amendment (Parliamentary Joint Committee) Bill 2007	1
Community Justice Centres Amendment Bill 2007	6
Constitution Amendment (Speaker) Bill 2007	2
Consumer Claims Amendment Bill 2007	6
Courts Legislation Amendment Bill 2007	4
Crimes (Administration of Sentences) Amendment (Assistance in Foreign Criminal Matters) Bill 2007	2
Crimes Amendment Bill 2007	3
Crimes Amendment (Consent – Sexual Assault Offences) Bill 2007	6
Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007	6

	Digest Number
Crimes (Domestic and Personal Violence) Bill 2007	7
Crimes (Forensic Procedures) Amendment Bill 2007	5
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	1
Crimes (Sentencing Procedure) Amendment Bill 2007	4
Criminal Legislation Amendment Bill 2007	4
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	2
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	1
Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Bill 2007	4
Drug and Alcohol Treatment Bill 2007	1
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007	1
Educational Support for Dyslexic Children Bill 2007*	2
Electricity Supply Amendment (Offences) Bill 2007	2
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007	2
Evidence Amendment Bill 2007	4
Evidence (Audio and Audio Visual Links) Amendment Bill 2007	7
Fair Trading Amendment (Funeral Goods and Services) Bill 2007	1
Food Amendment Bill 2007	4
Government Publicity Control Bill 2007*	2
Government Schools (Infrastructure Register) Bill 2007*	2
Guardianship Amendment Bill 2007	1
Housing Amendment (Community Housing Providers) Bill 2007	3
Human Cloning and Other Prohibited Practices Amendment Bill 2007	1
Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007	1
Judicial Officers Amendment Bill 2007	1
Jury Amendment Bill 2007	5
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007	4
Local Court Bill 2007	7
Local Government Amendment Bill 2007	7
Liquor Amendment (Small Bars and Restaurants) Bill 2007*	3
Liquor Amendment (Special Events Hotel Trading) Bill 2007	3
Mental Health Bill 2007	1
Miscellaneous Acts (Local Court) Amendment Bill 2007	7
Motor Dealers Amendment Bill 2007	2
Murray-Darling Basin Amendment Bill 2007	6

	Digest Number
National Parks and Wildlife Amendment (Leasing and Licensing) Bill 2007	2
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	2
Partnership Amendment (Venture Capital) Bill 2007	3
Police Amendment Bill 2007	6
Police Superannuation Legislation Amendment Bill 2007	1
Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007	7
Private Health Facilities Bill 2007	1
Professional Standards Amendment (Mutual Recognition) Bill 2007	1
Protection of the Environment Operations Amendment (Waste) Bill 2007	2
Renewable Energy (New South Wales) Bill 2007	2
Rice Marketing Amendment Bill 2007	7
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	4
Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007	5
Roads Amendment (Lane Cove Tunnel Filtration) Bill 2007*	4
Royal Rehabilitation Centre Sydney Site Protection Bill 2007*	2
Rural Communities Impacts Bill 2007*	1
Security Industry Amendment (Patron Protection) Bill 2007*	2
Senator's Elections Amendment Bill 2007	1
Standard Time Amendment (Daylight Saving) Bill 2007	2
Statute Law (Miscellaneous Provisions) Bill 2007	1
Statute Law (Miscellaneous Provisions) Bill (No. 2) 2007	7
Summary Offences Amendment (Spray Paint Cans) Bill 2007	4
Superannuation Legislation Amendment Bill 2007	2
Surveillance Devices Bill 2007	6
Sydney Water Catchment Management Amendment Bill 2007	7
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	1
Tow Truck Industry Amendment Bill 2007	4
Trade Measurement Legislation Amendment Bill 2007	3
Transport Administration Amendment (Countrylink Pensioner Booking Fee Abolition) Bill 2007*	5
Transport Administration Amendment (Portfolio Minister) Bill 2007	1
Transport (Safety and Traffic Management) Amendment (Alcohol) Bill 2007*	2
University of Technology (Kuring-gai Campus) Bill 2007*	2
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	1

	Digest Number
Wine Grapes Marketing Board (Reconstitution) Amendment Bill 2007	7

## Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2006	Digest 2007
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07			1
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06	8, 9	
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	10	
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05	1	
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	1	
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06		8	
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	1	
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06	13,15	
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06		10	
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	5	
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06		5	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07			1
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07			1
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06	8,9	
Education Legislation Amendment Bill 2006	Minister for Education and Training	10/11/06		16	
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06	6,8	
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06	07/06/06	8,12	
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07		1,7
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06	8,9	

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

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

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Administrative Decisions Tribunal Amendment (Confidential Documents) Bill 2007*	N, R				
Agricultural Industry Services Amendment Bill 2007		N, R			
Anti-Discrimination Amendment (Offender Compensation) Bill 2007	N, R				
APEC Meeting (Police Powers) Bill 2007	N, R, C		N, R		
Assisted Reproductive Technology Bill 2007	N			N	
Bail Amendment Bill 2007	N, R			N, R	
Biofuel (Ethanol Content) Bill 2007	N, R			N, R	
Brothels Legislation Amendment Bill 2007	N, R		N, R	N, R	
Channel 7 Former Epping Site Protection Bill 2007*	N, R				
Child Protection (Offenders Registration) Amendment (Suspended Sentences) Bill 2007	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2007				N, R	
Climate Futures Bill 2007*	N, R				
Consumer Claims Amendment Bill 2007				R	
Crimes Amendment Bill 2007				N, R	
Crimes Amendment (Consent – Sexual Assault Offences) Bill 2007				N, R	
Crimes Amendment (Sexual Procurement Or Grooming Of Children) Bill				N, R	
Crimes (Domestic and Personal Violence) Bill 2007				R	

Legislation Review Committee

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Crimes (Forensic Procedures) Amendment Bill 2007	N			R	
Crimes Legislation Amendment (Mobile Phones in Places of Detention) Bill 2007	N, R				
Crimes (Sentencing Procedure) Amendment Bill 2007	N			N, R	
Criminal Legislation Amendment Bill 2007	N, R			N, R	
Criminal Procedure Amendment (Local Court Process Reforms) Bill 2007	N			N, R	
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	N			N, C	
Drug and Alcohol Treatment Bill 2007	R, N, C			N, R	
Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2007			N		
Energy and Utilities Administration Amendment (Climate Change Fund) Bill 2007				N	
Evidence Amendment Bill 2007				N	
Evidence (Audio and Audio Visual Links) Amendment Bill 2007	N, R			R	
Food Amendment Bill 2007	N			C	
Guardianship Amendment Bill 2007	N, C, R		N	N, C	
Housing Amendment (Community Housing Providers) Bill 2007				N, R	
Human Cloning and Other Prohibited Practices Amendment Bill 2007	N, R				
Jury Amendment Bill 2007				R	
Law Enforcement (Powers and Responsibilities) Amendment Bill 2007				N, R	
Local Court Bill 2007				R	



	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentar y scrutiny
Local Government Amendment Bill 2007				R	
Mental Health Bill	N, R, C	N, C	N, C	N, R	
Miscellaneous Acts (Local Court) Amendment Bill 2007				R	
Parliamentary Electorates and Elections Amendment (Truth in Advertising) Bill 2007*	N				
Police Amendment Bill 2007				R	
Renewable Energy (New South Wales) Bill	N			N	
Road Transport (General) Amendment (Written-off Vehicles) Bill 2007	N			N, R	
Road Transport (Safety and Traffic Management) Amendment (Novice Drivers) Bill 2007				R	
Security Industry Amendment (Patron Protection) Bill 2007*	N				
Statute Law (Miscellaneous Provisions) Bill 2007	N			N, C	
Summary Offences Amendment (Spray Paint Cans) Bill 2007	N				
Surveillance Devices Bill 2007	N, R				
Sydney Water Catchment Management Amendment Bill 2007	N, R			R	
Terrorism (Police Powers) Amendment (Preventative Detention Orders) Bill 2007	N, R, C			N, C, R	
Tow Truck Industry Amendment Bill 2007				N, R	
University of Technology (Kuring-gai Campus) Bill 2007*	N, R			N, R	
War Memorial Legislation Amendment (Increased Penalties) Bill 2007	N, R				

Key

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

## Appendix 4: Index of correspondence on regulations reported on in 2007

<b>Regulation</b>	<b>Minister/Correspondent</b>	<b>Letter sent</b>	<b>Reply</b>	<b>Digest 2006</b>
Environmental Planning and Assessment Amendment (Designated Development) Regulation 2007	Minister for Planning	03/07/07	10/09/07	2, 3