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Legislation Review Committee

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No 15 of 2010

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

(1) The functions of the Committee with respect to Bills are:
   (a) to consider any Bill introduced into Parliament, and
   (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
      (i) trespasses unduly on personal rights and liberties, or
      (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
      (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
      (iv) inappropriately delegates legislative powers, or
      (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny

(2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to Regulations:

(1) The functions of the Committee with respect to regulations are:
   (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
   (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
      (i) that the regulation trespasses unduly on personal rights and liberties,
      (ii) that the regulation may have an adverse impact on the business community,
      (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
      (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
      (v) that the objective of the regulation could have been achieved by alternative and more effective means,
      (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
      (vii) that the form or intention of the regulation calls for elucidation, or
      (viii) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
   (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

(2) Further functions of the Committee are:
   (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
   (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

(3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2010

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

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 2010

This table specifies the action the Committee has taken with respect to Bills that received comment in 2010 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

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. Australian Jockey and Sydney Turf Clubs Merger Bill 2010; Totalizator Amendment Bill 2010

Issue: Commencement by Proclamation

16. Considering that the provisions in these Bills which are to commence by proclamation are largely minor or technical in nature, the Committee does not regard the Minister's discretion to commence the provisions by proclamation to be an inappropriate delegation of power in this instance.

2. Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010 *

Issue: Privacy – Clause 3 – Amendment of *Children and Young Persons (Care and Protection) Act 1998* – insertion of proposed section 120 (4) – homelessness of children, and proposed amendment of section 121 – homelessness of young persons:

16. The Committee considers that the Bill may undermine Article 16 of the United Nations *Convention on the Rights of the Child* with regard to the privacy rights of young persons of 16 years of age by not requiring their consent when reporting on homelessness when their consent can be reasonably or practicably obtained. The Bill may also conflict with Article 12 (1) of the *Convention on the Rights of the Child* with respect to the rights of young persons to express their views freely in all matters affecting them given their capability of forming their own views in accordance with their age and maturity.

17. However, the Committee notes that Article 20 of the *Convention on the Rights of the Child* states that children are entitled to special protection and assistance by the State if they are deprived of their family environment. The Committee is also aware that Article 25 (1) of the *Universal Declaration of Human Rights* provides that everyone has a right to a standard of living adequate for health and well being, including housing.

18. By weighing the above varying concerns, the Committee is of the view that the current requirement for the consent of young persons of 16 years of age provided by section 121 of the *Children and Young Persons (Care and Protection) Act 1998* with respect to reporting homelessness to the Director-General may be the least restrictive or constitutes the least adverse impact on the rights of a child with respect to their privacy and freedom of expression or of thought. Accordingly, the Committee refers clause 3 to Parliament for consideration as to whether there may be the potential for an undue trespass on the individual rights of young people.

19. However, the Committee is also of the firm belief that so long as there has been consent of the young person (above the age of 15 years) with regard to the reporting, then upon receipt of a homelessness report, the Director-General of the Department of Human Services should be required to take action by conducting an investigation or assessment and be required to provide or arrange for the provision of services or accommodation, in order to protect the young person's right to housing and to ensure special protection and assistance if he or she is deprived of a family environment.

3. Court Suppression And Non-Publication Orders Bill 2010

Issue: Close Justice

19 The Committee will write to the Attorney-General to seek clarification regarding the scope of the Bill.

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

22. Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.

23. The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.

4. Election Funding and Disclosures Amendment Bill 2010

Issue: Freedom of Speech

41. The Committee notes that one of the major reforms proposed by this Bill is to place a cap on electoral campaign expenditure during an election period. That is, candidates for election, or their advocates, are limited in how much they can spend on electoral communication during the course of an election period.

42. The Committee appreciates the public interest that exists in facilitating a framework in which all candidates participate on a more level playing field and the impact this has on promoting fair competition for election by minimising the difference in financial resources between contestants.

43. Notwithstanding, it is incumbent upon the Committee to identify issues that impact on individual rights. In this respect, the Bill may fetter the freedom of speech each candidate or advocate would otherwise have when contesting an election. Under the Bill, when a candidate running for election, or their advocate, reaches their stipulated spending cap, they would be in breach for any extra communication expenditure incurred over that cap.

44. However, the reasonableness of any such restrictions must be tested against the overall objectives of the Act which is to ensure that no one voice is dominant. The Committee notes that the Premier in her Agreement in Principle speech stated that:

> **Caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. Parties, groups and candidates must have sufficient resources to contest elections and engage in debate about political matters, or there is a risk that the High Court may find that the reforms invalidly limit the implied freedom of political communication.**

45. The Committee refers this matter to Parliament for its further consideration to ensure that the right of an individual to engage in free speech is not unduly trespassed by passage of the Bill.

5. Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010

Issue: Denial of Compensation – Amendment of *Electricity Supply Act 1995* – Schedule 1 [6] – proposed section 179A (1A) – Compensation not payable:

39. The Committee is of the view that the right to seek compensation is an important personal right and that such a right should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee refers to Parliament to consider whether there is such a compelling interest for the proposed section 179A (1A) in schedule 1 [6] or whether it may trespass unduly on individual rights by removing the right to seek compensation in relation to the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the proposed Act.

Issue: Retrospectivity – Clause 2 – Commencement – Schedule 1 – Amendment of *Electricity Supply Act 1995*:

41. The Committee will always be concerned where provisions are taken to have commenced on the day following the day on which the Bill is introduced into Parliament rather than after its assent. The Committee notes that the provisions will then apply retrospectively, and refers clause 2 to Parliament for consideration as to whether it may adversely impact or unduly trespass on personal rights.

6. Police Regulation (Superannuation) Amendment Bill 2010

Issue: Privacy – proposed section 15B (13) – Schedule 1 – Amendment of *Police Regulation (Superannuation) Act 1906* – Discharge of members medically unfit:

36. The Committee considers the proposed section 15B (13) which enables the Commissioner of Police may supply to STC (Police Superannuation Fund) medical information about the member of the police force, without the need to obtain the consent of the member despite any restrictions in applicable privacy legislation, may have the potential to unduly trespass on an individual's right to privacy.

37. Accordingly, the Committee refers proposed section 15B (13) of the Bill to Parliament for consideration.

7. Radiation Control Amendment Bill 2010

30. The Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987.*

Part One – Bills

SECTION A: COMMENT ON BILLS

1. AUSTRALIAN JOCKEY AND SYDNEY TURF CLUBS MERGER BILL 2010; TOTALIZATOR AMENDMENT BILL 2010

Date Introduced:	29 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. Kevin Greene MP
Portfolio:	Racing and Gaming

Purpose and Description

1. The object of the *Australian Jockey and Sydney Turf Clubs Merger Bill 2010* (Merger Bill) is to facilitate the merger of the Australian Jockey Club and the Sydney Turf Club into a new racing club incorporated under the *Corporations Act 2001*, and includes provisions for the transfer of certain assets, rights and liabilities and employees to the merged racing club.

2. The Merger Bill also makes provision in relation to the corporate governance and functions of the merged racing club, including the power to grant new leases, as well as other minor matters primarily of a savings or transitional nature. The Merger Bill also makes consequential amendments to certain other Acts and statutory instruments.

3. Meanwhile, the objects of the *Totalizator Amendment Bill 2010* (Amendment Bill) is to provide that a betting activity in respect of computer simulated horse racing, harness racing or greyhound racing events, such as 'Trackside' be approved under the principal Act.

4. The Amendment Bill also provides that TAB Limited is to be exclusively entitled to approval to conduct a betting activity involving computer simulated racing events until 2097, enables the Minister to direct that changes be made to a racing agreement, provides that Racing NSW is to compensate certain bodies if they lose an entitlement to revenue as a consequence of the approval of a betting activity involving computer simulated racing events and lastly, provides for a tax-free threshold in respect of the betting tax payable in connection with computer simulated racing events.

5. The *Australian Jockey and Sydney Turf Clubs Merger Bill 2010* is cognate with the *Totalizator Amendment Bill 2010.*

Background

6. The chairpersons of the Australian Jockey Club and Sydney Turf Club both wrote separately to the Minister to advise that their boards support the merger of the two clubs and that they have taken the first steps to register the proposed merged club as a new company under the *Corporations Act 2001*.

7. Although a majority of the Australian Jockey Club members voted in favour of a merger, a majority of Sydney Turf Club members voted against.

8. This Bill facilitates the framework for the two clubs to merge without hindrance.

9. Meanwhile, in relation to the *Totalizator Amendment Bill,* Tabcorp requested that the Government reclassify the certain computer simulated racing games as a wagering product for use in New South Wales along the same lines as it is provided in Victoria. This request has the support of the New South Wales racing industry, the Australian Hotels Association and Clubs New South Wales.

10. Previously, computer simulated racing games had not attracted much interest in NSW, but it is anticipated that there will be a significant growth in interest.

The Bills

11. **Outline of provisions**

Australian Jockey and Sydney Turf Clubs Merger Bill 2010

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.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines what the ***mandatory corporate governance provisions*** are and what it means for these provisions to be included in the constitution of a company. The mandatory corporate governance provisions are set out in Schedule 1 to the proposed Act.

Part 2 Merger of AJC and STC
Division 1 Establishment of merged racing club

Clause 6 specifically authorises a company that is being (or has been) established for the purpose of becoming the merged racing club to include the mandatory corporate governance provisions in its constitution. It also specifically authorises the merged racing club to carry on its affairs in accordance with such included provisions.

Clause 7 authorises the Minister, on behalf of the State, to enter into an arrangement with the merged racing club and certain other parties for the provision of financial assistance for the purpose of making improvements to Randwick Racecourse and Rosehill Gardens

Racecourse. The proposed section also specifically authorises certain conduct done in connection with the negotiation of, entry into and giving effect to such an arrangement that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Clause 8 enables the Minister, by order published in the Gazette, to declare a company to be the merged racing club if certain pre-conditions are met. These pre-conditions include that the Minister is satisfied that the constitution of the company includes the mandatory corporate governance provisions. The proposed section also enables the Minister, by such an order or by subsequent order, to specify a ***merger finalisation day***. The merger finalisation day will be the day on which business undertakings and employees of both the AJC and STC will be transferred by the proposed Act to the merged racing club.

Clause 9 prevents the merged racing club from omitting or otherwise altering the mandatory corporate governance provisions from its constitution without the Minister's consent.

Clause 10 specifically authorises the boards of directors of both the AJC and STC and the Minister to appoint directors of the merged racing club. The boards of directors of the AJC and STC will be authorised to appoint 3 directors each to the first board of directors of the merged racing club. The Minister will also be authorised to appoint 3 directors to that board along with directors to replace directors the Minister has previously appointed whenever a vacancy arises. Directors appointed by the Minister will be known as the independent directors. The Minister will only be able to appoint independent directors on the recommendation of a specially constituted appointments selection panel. An appointments selection panel will be required to make recommendations based on certain selection criteria and following probity checks. Recommendations will be required to be on the basis of merit.

Division 2 Transfer of business undertakings and employees of AJC and STC to merged racing club

Clause 11 provides that the proposed Division operates specifically (and in accordance with the requirements of the proposed Division) to transfer the business undertakings and employees of both the AJC and the STC to the merged racing club and to confer or impose certain other rights and liabilities. The provisions of the proposed Division will only have effect on and from the merger finalisation day.

Clause 12 defines certain terms and expressions used in the proposed Division.

Clause 13 transfers assets held by or on behalf of the AJC and STC to the merged racing club. These assets will include the lease of the AJC over Randwick Racecourse.

Clause 14 transfers licences, permits, consents, entitlements, accreditations and other authorities held by or on behalf of the AJC and STC and in force under State legislation to the merged racing club.

Clause 15 transfers the rights and liabilities of the AJC and STC to the merged racing club.

Clause 16 updates certain references in legal instruments (including legislation) to reflect the fact that the business undertakings of the AJC and STC have been transferred to the merged racing club. The proposed section also confirms that the merged racing club

becomes the party to certain contracts and other arrangements entered into by the AJC or STC instead of the AJC or STC.

Clause 17 provides for certain pending proceedings by or against the AJC or STC relating to their transferred business undertakings to be treated as being proceedings by or against the merged racing club.

Clause 18 provides for certain acts, matters or things done, or omitted to be done, in relation to the transferred business undertakings of the AJC or STC to be treated as having been done, or omitted to be done, by, to or in respect of the merged racing club.

Clause 19 provides for how certain assets, rights and liabilities located outside of New South Wales are to be treated when the business undertakings of the AJC and STC are transferred to the merged racing club.

Clause 20 confirms that officers of the AJC and STC cease to have the rights and liabilities that they had or incurred in their official capacities in relation to the business undertakings of the AJC or STC once those undertakings are transferred to the merged racing club.

Clause 21 ensures that the provisions of the proposed Division also operate to transfer potential entitlements and obligations if and when they arise.

Clause 22 provides for the employees of the AJC and STC to become the employees of the merged racing club and preserves (subject to any applicable Commonwealth or State legislation) the terms and conditions of employment of the transferred employees.

Clause 23 prohibits the merged racing club from selling or otherwise disposing of any of the necessary racing infrastructure of certain of its racecourses for a 10-year period.

Clause 24 provides for the following:

> (a) the dissolution of the STC,
> (b) the conferral of an entitlement on existing members of the AJC and STC to be afforded the same or equivalent club membership entitlements as they currently have for a 12 month period,
> (c) that the merged racing club is for all purposes, including the rules of private international law, the successor of the dissolved STC.

The proposed section also makes it clear that the proposed Act does not operate to dissolve or wind up, or require the winding up of, the AJC. The eventual deregistration of the AJC as a company will be a matter for the AJC to pursue under the Corporations Act.

Clause 25 enables the merged racing club to provide abbreviated information to registration authorities (such as the Registrar-General) to enable such authorities to update registers that they maintain in respect of assets, rights or liabilities.

Clause 26 provides that no compensation is payable in connection with the operation of the proposed Division.

Clause 27 enables the Minister, by notice in writing, to confirm that particular employees, assets, rights, liabilities or regulatory authorisations have been transferred to the merged racing club under the proposed Division.

Part 3 Operation of Randwick Racecourse and other racecourses
Division 1 Functions of merged racing club in relation to Randwick Racecourse

Clause 28 provides that the functions that are conferred or imposed on the merged racing club in relation to Randwick Racecourse by proposed Part 3 are conferred or imposed only while the merged racing club is the lessee of that Racecourse. Proposed section 13 will transfer the lease of the AJC over the Racecourse to the merged racing club on the merger finalisation day.

Clause 29 provides for the functions that the merged racing club has in relation to Randwick Racecourse.

Clause 30 enables the Randwick Racecourse trustees to consent to the use of Randwick Racecourse for certain additional activities.

Clause 31 enables the merged racing club to maintain buildings and other improvements within Randwick Racecourse and to erect or re-erect buildings and other improvements.

Division 2 Leasing of Randwick Racecourse

Clause 32 continues the power of the Governor to appoint the Randwick Racecourse trustees despite the *Australian Jockey Club Act 2008* ceasing to have effect and then being repealed under the proposed Act.

Clause 33 enables the Racecourse trustees to grant further leases of Randwick Racecourse to the merged racing club for periods not exceeding 99 years on the surrender of the current lease.

Clause 34 specifically authorises certain conduct done in connection with the granting of leases over Randwick Racecourse under proposed section 33 that might otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

Division 3 Use of racecourses operated by merged racing club

Clause 35 provides that the proposed Division applies to each of the following racecourses (an ***applicable racecourse***) on and from the merger finalisation day:

> (a) Randwick Racecourse,
> (b) any other racecourse that is owned or controlled by the merged racing club (including any buildings, structures, fixtures, fittings and other improvements on the racecourse).

Clause 36 enables the merged racing club to make by-laws, with the approval of the Governor, in connection with the use or management of any applicable racecourse.

Clause 37 enables the merged racing club to exclude or expel certain persons from any applicable racecourse.

Clause 38 makes it an offence for a person intentionally or recklessly to trespass on any part of any applicable racecourse (or any building or structure located within any applicable racecourse). The maximum penalty for such an offence will be 50 penalty units (currently, $5,500).

Part 4 Miscellaneous

Clause 39 provides for the *Australian Jockey Club Act 2008* and the *Sydney Turf Club Act 1943* to cease to have effect on the merger finalisation day. The proposed section also enables the Governor, by proclamation, to repeal those Acts on or after that day.

Clause 40 provides that nothing in the proposed Act limits the operation of the *Racing Administration Act 1998* or the *Thoroughbred Racing Act 1996* in their application to the conduct of racing activities by or on behalf of the merged racing club.

Clause 41 provides that the proposed Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.

Clause 42 provides that the proposed Act is intended to have effect outside of the territorial limits of New South Wales as well as within the State.

Clause 43 ensures that the operation of the proposed Act will not result in a breach of contract or any other civil liability.

Clause 44 provides for the displacement of the Commonwealth Corporations legislation under section 5G of the Corporations Act in favour of certain provisions of the proposed Act. The proposed section also enables further displacements to be effected under section 5F or 5G of the Corporations Act by regulations made under the proposed Act.

Clause 45 provides that State tax is not payable in respect of matters relating to the transfer of the business undertakings of the AJC and STC to the merged racing club.

Clause 46 makes provision for the giving or service of documents under the proposed Act.

Clause 47 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 48 provides that offences against the proposed Act or by-laws made under the proposed Act may be dealt with summarily before the Local Court.

Clause 49 provides for the review of the proposed Act in 3 years.

Schedule 1 Mandatory corporate governance provisions

Schedule 1 sets out the mandatory corporate governance provisions that the merged racing club will be required to include in its constitution.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Acts and statutory instruments

Schedule 3 amends the Acts and statutory instruments specified in that Schedule.

Totalizator Amendment Bill 2010

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

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

Schedule 1 Amendment of *Totalizator Act 1997* No 45

Under section 13 of the principal Act, the Minister may approve of the holder of a licence under that Act conducting a betting activity (otherwise than by means of a totalizator) on particular events or contingencies, subject to conditions. Such an approved betting activity is then generally subject to the same provisions under that Act as totalizator betting. **Schedule 1 [1]** amends section 13 so that a betting activity on computer simulated horse racing, harness racing or greyhound racing events is a betting activity that may be approved by the Minister.

Schedule 1 [2] entitles TAB Limited to an exclusive approval to conduct a betting activity on computer simulated racing events until 6 March 2097, which is the end of the term of the licence held by TAB Limited.

Schedule 1 [3] authorises, for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, the exclusive approval of the holder of a licence under the principal Act conducting a betting activity on computer simulated racing events.

Schedule 1 [4] inserts proposed sections 117B and 117C. Proposed section 117B enables the Minister to direct that changes be made to a racing agreement that the Minister considers to be necessary or desirable for ensuring that the agreement is in the best interests of racing in New South Wales. However, the Minister will not be able to make such a direction after 31 January 2011. Proposed section 117C provides that Racing NSW is to compensate the Provincial Association of New South Wales and Racing NSW Country Limited if those bodies lose an entitlement to revenue as a consequence of the approval of a betting activity on computer simulated racing events.

Schedule 1 [5] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 [1] and **[2]** amend the *Betting Tax Act 2001* to provide that betting tax is not payable (until after 30 June 2034) on net earnings in connection with the first $255 million of

bets placed with a totalizator licensee in any financial year in respect of an approved betting activity conducted by the licensee on computer simulated horse racing, harness racing or greyhound racing events.

Schedule 2.2 inserts a savings and transitional provision into the *Gaming Machines Act 2001* to revoke an existing approval granted under that Act in respect of the game known as "Trackside" as a multi-terminal gaming machine.

Issues Considered by the Committee

Delegation of Legislative Power [s 8A(1)(b)(iv) *LRA*]

Issue: Commencement by Proclamation

12. The Committee notes that parts of the Merger Bill and all of the Amendment Bill are 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.

13. With respect to the Merger Bill, the Committee notes that the bulk of the Act is to commence on assent with only Schedule 3 to commence on a day or days to be appointed by proclamation. Further, Schedule 3 primarily amends Acts and other statutory instruments and most of these amendments are of a minor or technical nature. In this respect, the Committee does not hold any concerns with the commencement provisions of the Merger Bill.

14. With respect to the Amendment Bill, the Committee notes that the Bill largely relates to enabling TAB Limited exclusive approval to conduct certain computer simulated racing games as well as some changes to the tax-free threshold under the *Betting Tax Act 2001.*

15. Considering that the provisions in these Bills which are to commence by proclamation are largely minor or technical in nature, the Committee does not regard the Minister's discretion to commence the provisions by proclamation to be an inappropriate delegation of power in this instance.

16. **Considering that the provisions in these Bills which are to commence by proclamation are largely minor or technical in nature, the Committee does not regard the Minister's discretion to commence the provisions by proclamation to be an inappropriate delegation of power in this instance.**

The Committee makes no further comment on this Bill.

2. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (HOMELESSNESS REPORTING AGE) BILL 2010 *

Date Introduced:	29 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Ms Pru Goward MP
Portfolio:	Liberal Party

Purpose and Description

1. This Bill amends the *Children and Young Persons (Care and Protection) Act 1998* to require action to be taken in relation to reports on the homelessness of young persons who are under the age of 17 years.

2. The Bill proposes an amendment to section 120 of the Act, to state:

> A reference in this section to a "child" includes a reference to a young person who is under the age of 17 years.

3. The new section 121 will include that the homelessness of young people, with the insertion of "who is above the age of 16 years" after "a young person". This aims to make sure the Department of Human Services is obliged to investigate any report of homelessness and provide accommodation and other services to deal with that young person's homelessness.

Background

4. The New South Wales Government has raised the school leaving age to 17 years or the age at which a child completes year 10 of secondary education, whichever comes first.

5. Last year's amendments to the *Education Act* leave parents and guardians, including the Minister for Community Services and the department, exposed to penalties for failing to ensure that a young person up to 17 years of age attends school. Before the Act was amended, the school leaving age was 16. The *School Leaving Age Regulation 2009* provides that to leave school, a child must attain the age of 17 years or have completed year 10 of secondary education, whichever occurs first.

6. The *Education Amendment (School Attendance) Bill 2009* was passed to ensure that children of compulsory school age attend school. The object was to facilitate the provision of information to the director general of the Department of Education and Training about children who are not attending school; to provide for confidential conferences with parents and other relevant parties to insist on ensuring a child

attends school; to provide for the making of compulsory schooling orders by the Children's Court directed at parents whose children do not attend school and in certain cases directed at children who do not attend school; and to increase the monetary penalties for parents who do not ensure that their children attend school, in particular, where parents fail to comply with compulsory schooling orders.

7. If a young person of under 17 years of age, does not have a home, then attending a school or suitable training facility will be difficult. This Private Member's Bill aims to address the need for homelessness reports for these young people which must be made to the department and be investigated by the department.

8. At the last census in 2006, almost 5,000 young people were homeless between the ages of 12 and 18 in New South Wales. The 2006 census of school students found that approximately 15 per cent of homeless students may have had an experience in State care. The National Youth Commission has suggested that mental health issues can be both a cause and consequence of homelessness. The National Youth Commission also explained that youth homelessness does not involve a particular type of person, but a process of events that happens in a young person's life.

The Bill

9. The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* to require the Director-General of the Department of Human Services to act on reports on the homelessness of young persons who are 16 years old and to enable such reports to be made without the consent of the young person concerned. At present, reports on the homelessness of young persons (namely 16 and 17-year olds) may only be made with the consent of the young person and the Director-General is not required to act on any such report.

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 amends the *Children and Young Persons (Care and Protection) Act 1998* in the manner described in the above overview.

Issues Considered by the Committee

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

Issue: Privacy – Clause 3 – Amendment of *Children and Young Persons (Care and Protection) Act 1998* – insertion of proposed section 120 (4) – homelessness of children, and proposed amendment of section 121 – homelessness of young persons:

11. Currently, reports on the homelessness of young persons (16 and 17 year olds) may only be made with the consent of the young person and the Director-General of the Department of Human Services is not required to act on such reports. The Bill

proposes to amend the *Children and Young Persons (Care and Protection) Act 1998* to require the Director-General to act on reports on the homelessness of young persons who are 16 years old and to enable such reports to be made without the consent of that young person.

12. The current section 120 (1) of the Act provides that any person may report the homelessness of a child to the Director-General. Subsection (2) states that: On receipt of a report, the Director-General must conduct such investigation and assessment concerning the child as the Director-General considers necessary. The Bill proposes to amend the definition of a child under section 120 to include a person who is of 16 years of age. The Bill also seeks to amend section 121 of the Act to refer to a young person as being above the age of 16 years such that consent is only required of a young person above the age of 16 years with regard to reporting homelessness of that person.

13. Article 12 (1) of the United Nations *Convention on the Rights of the Child* establishes that: States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

14. Article 16 of the *Convention on the Rights of the Child* establishes that:

> 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
>
> 2. The child has the right to the protection of the law against such interference or attacks.

15. However, Article 20 of the *Convention* states that:

> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

16. **The Committee considers that the Bill may undermine Article 16 of the United Nations *Convention on the Rights of the Child* with regard to the privacy rights of young persons of 16 years of age by not requiring their consent when reporting on homelessness when their consent can be reasonably or practicably obtained. The Bill may also conflict with Article 12 (1) of the *Convention on the Rights of the Child* with respect to the rights of young persons to express their views freely in all matters affecting them given their capability of forming their own views in accordance with their age and maturity.**

17. **However, the Committee notes that Article 20 of the *Convention on the Rights of the Child* states that children are entitled to special protection and assistance by the State if they are deprived of their family environment. The Committee is also aware that Article 25 (1) of the *Universal Declaration of Human Rights* provides that everyone has a right to a standard of living adequate for health and well being, including housing.**

18. **By weighing the above varying concerns, the Committee is of the view that the current requirement for the consent of young persons of 16 years of age provided by section 121 of the *Children and Young Persons (Care and Protection) Act 1998* with respect to reporting homelessness to the Director-General may be the least restrictive or constitutes the least adverse impact on the rights of a child with respect to their privacy and freedom of expression or of thought. Accordingly, the Committee refers clause 3 to Parliament for consideration as to whether there may be the potential for an undue trespass on the individual rights of young people.**

19. **However, the Committee is also of the firm belief that so long as there has been consent of the young person (above the age of 15 years) with regard to the reporting, then upon receipt of a homelessness report, the Director-General of the Department of Human Services should be required to take action by conducting an investigation or assessment and be required to provide or arrange for the provision of services or accommodation, in order to protect the young person's right to housing and to ensure special protection and assistance if he or she is deprived of a family environment.**

The Committee makes no further comment on this Bill.

3. COURT SUPPRESSION AND NON-PUBLICATION ORDERS BILL 2010

Date Introduced:	29 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon John Hatzistergos MLC
Portfolio:	Attorney General

Purpose and Description

1. This Bill provides for the making of suppression and non-publication orders by courts.

2. Clause 6 states the intention of this Bill. In deciding whether to make a suppression or non-publication order, a court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

3. Clause 8 sets out the grounds on which a court may make an order:

   to prevent prejudice to the proper administration of justice;

   to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;

   to protect the safety of any person;

   to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature including an act of indecency; or

   where it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice.

4. The courts maintain their discretionary power to weigh relevant interests in the particular case before them, with the above grounds aiming to assist the courts in balancing this determination. The administration of justice ground was specifically recommended by the New South Wales Law Reform Commission in their Review of the Law of Contempt by Publication, while the security ground is common in relevant Commonwealth legislation. The public interest ground is intended to cover those situations that do not fit easily within the other specified grounds. It is intended that these other reasons should only outweigh the public interest in open justice where it does so "significantly".

5. Clause 3 sets out definitions relevant to the operation of the Bill. The definition of "news media organisation" is consistent with the definition in the *Court Information Act 2010*. The definition of "court" includes the Supreme Court, Land and Environment Court, Industrial Court, District Court, Local Court or Children's Court, which is also consistent with the definition in the *Court Information Act 2010*. The Bill

also allows any other court or tribunal, or a person or body having power to act judicially, to be prescribed as a court by regulations for the purposes of this Act.

6. "Suppression order" and "non-publication order" are also defined. A suppression order is a broader term referring to the prohibition or restriction on access to, or disclosure of something, such as certain documents. A non-publication order is more specific, prohibiting or restricting publication only, to allow the media and general public to access information, but not to publish it. For example, this could include the name and address of a party or a witness. The term "publish" is also defined in clause 3.

7. Clauses 4 and 5 provide that the provisions are not intended to limit or otherwise affect any inherent jurisdiction or powers of a court, nor are they intended to limit or otherwise affect the operation of any provision made by or under any other Act that appropriately prohibits or restricts publication or disclosure of information in connection with proceedings. This provision recognises that suppression and non-publication orders made by our courts are only one of three ways that publication of material in relation to court proceedings can be prescribed. The others are under the common law of sub judice and by express statutory authority. This Bill is not intended to affect the operation of the common law or these specific legislative protections and also not to dilute any current protections afforded to vulnerable persons.

8. Clause 7 sets out the power to make orders, providing that a court may prohibit or restrict the publication or other disclosure of information where it may tend to reveal the identity of or otherwise concerning any party to or witness in court proceedings, or any person who is related to or otherwise associated with any party or witness, or where it may compromise evidence, or information about evidence, given in the court proceedings. This power binds all members of the public, not just those who are present at proceedings. This issue was specifically identified by the New South Wales Law Reform Commission in its Review of the Law of Contempt by Publication.

Background

9. This Bill follows the passage earlier this year of the *Court Information Act 2010*, which sets a statutory framework for access to documents and other court information held by New South Wales courts in connection with criminal and civil proceedings. At the time of the introduction of the *Court Information Act 2010*, the Government indicated that it was the first stage in a two-stage process that will see all statutory provisions relating to access to court information eventually contained in a single statute. This Bill is the second stage of that process, providing in one consolidated statute the law relating to the making of non-publication and suppression orders by the courts.

10. Like the *Court Information Act*, this Bill originated in the New South Wales Law Reform Commission's 2003 Review of the Law of Contempt by Publication and was the result of an extensive consultation process. In its report, the Law Reform Commission recognised that the law of contempt by publication is linked to the rights to access court information. The report suggested that rights to access court information should be clarified.

11. In 2004, the New South Wales Supreme Court conducted community consultation on the issue of access to court records. The consultation identified issues about the existing framework for accessing court information and resulted in the referral of the

issue to the then Attorney General's Department for the development of an appropriate policy. In June 2006, the department released a discussion paper "Review of the Policy on Access to Court Information" for public consultation. Submissions further informed the department's consideration of a new framework for managing access to court information.

12. The resulting report by the Attorney General's Department, entitled "Report on Access to Court Information," was released in July 2008. This report made recommendations in relation to suppression and non-publication orders that have assisted in the framing of the provisions of this Bill.

13. In March 2008, the Standing Committee of Attorneys-General [SCAG] asked officers to look at the current use of suppression and non-publication orders, including the possibility of harmonisation across jurisdictions.

14. At the July 2008 meeting of the Standing Committee of Attorneys-General, Ministers requested that officers develop proposals on potential areas of harmonisation of suppression and non-publication orders, and a working group was formed. That working group found that there were differences across jurisdictions in relation to the law on suppression and non-publication orders that needed to be addressed in the development of model provisions. This ranged from the use of different terminology, to varied powers to make orders, grounds for making orders, issues of standing, duration of orders, review and appeal of orders, and the consequences for breaching orders.

15. Model provisions have continued to be developed by the working party. Earlier in 2010, the Attorney General released draft model provisions to targeted stakeholders, including the media, the courts and the legal profession. Most stakeholders gave their support for the draft provisions. The stakeholders include the Victims Advisory Board, the Law Society of New South Wales, and Legal Aid New South Wales. According to the Agreement in Principle speech, the New South Wales Director of Public Prosecutions was supportive, stating:

> I indicate that I strongly support the introduction of this legislation that confers power on NSW courts to regulate and restrict persons who are not parties to proceedings in the publication of evidence in and information arising out of criminal proceedings. The Bill appears to me to strike an appropriate balance between the interests of open justice, the proper administration of justice and the human rights of all concerned.

16. At the May 2010 Standing Committee of Attorney-Generals' meeting, Ministers endorsed the model provisions that were settled following the extensive consultation process, and agreed to consider their implementation in their jurisdictions. New South Wales will be the first jurisdiction to adopt the model provisions in the form of this Bill. In addition to this legislative aspect of the Standing Committee of Attorneys-General project, the working party is also considering a related proposal for a national register of suppression and non-publication orders, which will further assist to bring clarity and certainty to this area across the nation.

The Bill

17. The object of this Bill is to confer on courts the power to make suppression orders (which prohibit or restrict the disclosure of information) and non-publication orders

(which prohibit or restrict the publication of information) in civil or criminal proceedings. It authorises the making of these orders for the purpose of preventing or restricting the publication or other disclosure of the identity of a party or witness to proceedings and their associates, or of evidence or information about evidence given in proceedings. The Bill specifies the grounds on which such an order can be made. It also repeals certain provisions of other laws that confer powers on courts to make suppression and non-publication orders.

18. 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 contains definitions for the purposes of the proposed Act.

The definition of ***court*** limits the application of the proposed Act to the Supreme Court, Land and Environment Court, Industrial Court, District Court, Local Court, Children's Court and any court, tribunal, person or body that has the power to act judicially and is prescribed by the regulations as a court for the purposes of the proposed Act.

The definition of ***proceedings*** includes both civil and criminal proceedings within the scope of the proposed Act.

Clause 4 provides that the proposed Act does not limit or otherwise affect a court's inherent jurisdiction to regulate its proceedings or to deal with contempt of the court.

Clause 5 provides that the proposed Act does not affect the operation of a provision of any other Act that directly prohibits or restricts the publication or disclosure of information in connection with proceedings or that authorises a court to do so.

Part 2 Suppression and non-publication orders

Clause 6 provides that, when making a suppression or non-publication order, a court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

Clause 7 confers on a court the power to make a suppression or non-publication order on the grounds permitted by the proposed Act in respect of information tending to reveal the identity of or otherwise concerning any party or witness to proceedings and information that comprises evidence or information about evidence in proceedings.

Clause 8 provides for the grounds on which a court may make a suppression or non-publication order.

Clause 9 provides for the procedure by which a court may make a suppression or non-publication order, including identifying the persons who are entitled to make an application for such an order, the persons who are entitled to appear and be heard by a court on such an application, when such an order may be made and that an order may be subject to certain conditions or exceptions and must specify certain information.

Clause 10 provides that a court may make an interim suppression or non-publication order in certain situations without determining the merits of the application until the application is determined.

Clause 11 provides for the circumstances in which a suppression or non-publication order may apply outside New South Wales. In order for a court to make an order apply outside of New South Wales, it must be satisfied that such a course of action is necessary for achieving the purpose for which the order has been made.

Clause 12 makes provision in relation to the duration of a suppression or non-publication order.

Clause 13 provides that a court may review a suppression or non-publication order made by that court on its own initiative or on the application of a person, outlines the persons entitled to apply for such a review and allows a court to confirm, vary or revoke such an order.

Clause 14 sets out the procedure for appeal against either a decision of a court to make or not to make a suppression or non-publication order or a decision of a court in relation to a review of such an order.

Clause 15 provides for an exception to a suppression order made by a court for court officials in circumstances where the disclosure is not by publication and is in the course of the performance by that officer of functions or duties or in exercising powers in a public official capacity in connection with the conduct of proceedings, the recovery or enforcement of a penalty imposed in proceedings, or in compliance with any procedure adopted by a court.

Clause 16 provides for the circumstances in which a person commits an offence under the proposed Act in relation to a contravention of a suppression or non-publication order.

Part 3 General

Clause 17 provides that proceedings for an offence under the proposed Act are to be determined summarily either by the Local Court (which may only impose a maximum monetary penalty of 100 penalty units for an individual or 500 penalty units for a body corporate) or the Supreme Court in its summary jurisdiction.

Clause 18 provides a general regulation-making power.

Schedule 1 Savings, transitional and other provisions

Schedule 1 enacts a savings and transitional regulation-making power and a transitional provision to continue the operation of the provisions repealed by Schedule 2 in respect of orders and directions made under those provisions before their repeal.

Schedule 2 Amendment of Acts

Schedule 2 repeals existing provisions in various Acts that currently confer on courts the power to make suppression and non-publication orders.

Issues Considered by the Committee

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

Issue: Close Justice

19. The Committee will write to the Attorney General to seek clarification regarding the scope of the Bill.

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

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

20. 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 proposed Act on whatever day it chooses or not at all. However, the Committee understands from the Agreement in Principle speech that:

> …[I]n addition to this legislative aspect of the Standing Committee of Attorneys-General project, the working party is considering a related proposal for a national register of suppression and non-publication orders, which it is hoped will further assist to bring clarity and certainty to this area across the nation.

21. The Committee further notes from the speech that:

> At the time of the introduction of the *Court Information Act 2010*, the Government indicated that it was the first stage in a two-stage process that will see all statutory provisions relating to access to court information eventually contained in a single statute. The *Court Suppression and Non-publication Orders Bill 2010* is the second stage of that process, providing in one consolidated statute the law relating to the making of non-publication and suppression orders by the courts.

22. **Accordingly, the Committee considers the above will involve appropriate administrative and transitional arrangements to be made, which may require discretion for commencement by proclamation. Therefore, these circumstances do not appear to constitute an inappropriate delegation of legislative power.**

23. **The Committee has not identified any issues regarding Clause 2 under s 8A(1)(b)(iv) of the *Legislation Review Act 1987*.**

The Committee makes no further comment on this Bill.

4. ELECTION FUNDING AND DISCLOSURES AMENDMENT BILL 2010

Date Introduced:	28 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. Kristina Keneally MP
Portfolio:	Premier

Purpose and Description

20. The object of this Bill is to amend the *Election Funding and Disclosures Act 1981* to make significant reforms to the political funding and campaign finance.

21. In particular, the Bill proposes to place caps on political donations, impose limits on campaign expenditure, regulate the electoral participation of third parties and increase public funding for State election campaigns.

Background

22. In 2008, the Legislative Council Select Committee on Electoral Matters released its report into electoral and political party funding in NSW. This inquiry, which coincided with the Commonwealth Government's Electoral Reform Green Paper, provided a comprehensive review of the State of election finance in NSW and recommended that the Government consider changes.

23. In 2009, the NSW Government introduced the *Election Funding and Disclosures (Property Developers Prohibition) Act 2009* which prohibited political donations by professional corporate property developers and their close associates. This reform came on the back of longstanding community concern about the making of political donations by interested parties and its perceived impact on the integrity of Government.

24. In December 2009, the Government made a reference to the Joint Standing Committee on Electoral Matters to …

> … inquire into a public funding model for political parties and candidates to apply at the State and local Government levels.

25. The Committee sought public comment and received 30 submissions from a wide cross section of the community, including political parties, academics, independent statutory offices and third party participants. The Committee also held formal hearings in February 2010 in which it sought expert legal and constitutional opinion.

26. The Committee published its report – *The Public Funding of Election Campaigns* – on 26 March 2010 in which it made 51 recommendations. The cross-party Committee broadly supported that there be a cap on political donations, that the Government consider regulating campaign expenditure and that there be an increase in the public

funding of political parties. This Bill draws heavily from the recommendations contained in that report.

The Bill

27. 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 1 January 2011.

Schedule 1 Amendments to *Election Funding and Disclosures Act 1981* No 78 relating to political donations and electoral expenditure

Caps on political donations and electoral communication expenditure

Schedule 1 [21] inserts new provisions relating to caps on political donations and electoral communication expenditure relating to State elections. The provisions include caps on political donations to registered parties, parties that are not registered, elected members, groups, candidates and third-party campaigners. There will be a prohibition on political donations that exceed the applicable cap and it will be unlawful for a person to make or accept political donations to more than 3 third-party campaigners in the same financial year. Party subscriptions (not exceeding $2,000 per member) are to be disregarded for the purposes of the cap on political donations. There will also be caps on electoral communication expenditure that will apply to expenditure in the capped expenditure period. For the State election to be held on 26 March 2011, that period begins on 1 January 2011. For subsequent general elections, the period begins on 1 October in the year prior to the election and, in any other case, the period begins on the day of the issue of the writs for the election. The cap on donations and expenditure will not apply to Federal or local government campaigns provided a separate account is established for that purpose.

Schedule 1 [3] and [4] make consequential amendments.

Meaning of political donations, electoral expenditure and electoral communication expenditure

Schedule 1 [8] and [9] clarify when a disposition of property is or is not taken to be a gift (and therefore is or is not a political donation).

Schedule 1 [10] makes a consequential amendment to the definition of ***reportable political donation*** (reportable political donations being donations of or exceeding $1,000 made to or for the benefit of a party, elected member, group, candidate or third-party campaigner).

Schedule 1 [12] sets out what is meant by ***electoral expenditure*** and ***electoral communication expenditure***. **Schedule 1 [7]** generalises a provision that currently only applies to public funding of election campaigns.

Disclosure of political donations and electoral expenditure

Schedule 1 [13] requires disclosure of political donations and electoral expenditure by third-party campaigners in the same way as it is required by parties, members, groups and candidates and major political donors. **Schedule 1 [14]** extends the period in respect of

which disclosures are to be made from every 6 months to every 12 months. **Schedule 1 [16]** is a consequential amendment. **Schedule 1 [15]** provides that it is the official agent of a third-party campaigner who is responsible for making disclosures. **Schedule 1 [17]** provides that if a third-party campaigner is also a major political donor the disclosure may be made in a single declaration. **Schedule 1 [20]** clarifies that all electoral expenditure is required to be disclosed, whether or not it is incurred during the capped expenditure period. **Schedule 1 [30]** requires a declaration of disclosures by a party to be accompanied by a copy of the duly audited annual financial statement of the party in a form approved by the Election Funding Authority (the ***Authority***).

Campaign accounts for parties during State election campaigns

Schedule 1 [22] makes it unlawful for a party to make a payment for electoral expenditure for a State election campaign unless the payment comes from the State campaign account of the party. The State campaign account of a party is to be a separate account. The following may be paid into the account:

(a) political donations made to the party after 1 January 2011,
(b) payments made to the party from the Election Campaigns Fund at any time,
(c) money borrowed by the party at any time,
(d) money belonging to the party on 1 January 2011.

Party subscriptions, amounts of political donations that exceed the applicable cap and any payments to the party from the Administration Fund or the Policy Development Fund (established under Part 6A of the principal Act. See Schedule 2 [4]) may not be paid into the State campaign account.

Third-party campaigners

Schedule 1 [23] makes it unlawful for a ***third-party campaigner*** (an entity or other person not being a registered party, elected member, group or candidate) to incur more than $2,000 of electoral communication expenditure without being registered. It will also be unlawful for third-party campaigners to make payments for electoral communication expenditure, or to use political donations to incur electoral expenditure, unless the payments from that electoral communication expenditure are made by the official agent from the campaign account of the third-party campaigner. Political donations that exceed the applicable cap on donations are not to be paid into the third-party campaigner's campaign account. **Schedule 1 [2]** inserts a definition of ***third-party campaigner*** and **Schedule 1 [11], [18], [19] and [29]** insert references to third-party campaigners in various provisions.

Offences

Schedule 1 [24] updates the prohibition on accepting certain political donations to provide that it is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is an individual who is enrolled to vote at State or other elections or an entity that has an ABN or similar business number.

Schedule 1 [25] provides that it is unlawful for a party (or a candidate elected or endorsed by a party) to make political donations to Independent candidates.

Schedule 1 [26] makes a consequential amendment.

Schedule 1 [27] and [28] provide that a person who does any act that is unlawful under proposed Division 2A (Caps on political donations) or 2B (Caps on electoral expenditure for State election campaigns) or existing Division 3, 4 or 4A of Part 6 is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful (maximum penalty: 200 penalty units in the case of a party and 100 penalty units in any other case).

Other amendments

Schedule 1 [1] changes the name of the Act to the *Election Funding, Expenditure and Disclosures Act 1981*.

Schedule 1 [2], [5] and [6] contain amendments relating to words and expressions used in the proposed Act.

Schedule 2 Amendments to Election Funding and Disclosures Act 1981 No 78 relating to election and other funding

Public funding of election campaigns

Schedule 2 [3] substitutes Part 5 of the principal Act, which deals with public funding of State election campaigns. In the proposed Part, electoral expenditure for a State election is electoral communication expenditure incurred during the capped expenditure period for the election. For the State election to be held on 26 March 2011, that period begins on 1 January 2011. For subsequent general elections, that period begins on 1 October in the year prior to the election and, in any other case, the period begins on the day of the issue of the writs for the election. The proposed Part establishes the Election Campaigns Fund, which is kept by the Authority. Parties and candidates may be eligible for payments from the Election Campaigns Fund in respect of State elections (other than for by-elections for the Assembly). The amount to be distributed from the Election Campaigns Fund to a party or a candidate eligible for payment in respect of a State election is the amount of the actual electoral communication expenditure incurred by the party or candidate in connection with the election, on a sliding scale and subject to the applicable cap on electoral expenditure. In the case of a candidate endorsed by 2 or more registered parties, the parties are taken to constitute one party for the purposes of calculating the amount payable to the party, and the amount calculated is to be divided among the parties. A party is eligible for an advance payment from the Election Campaigns Fund of up to 30% of the amount to which the party was entitled for the previous State election.

The proposed Part also contains general provisions relating to funding, including provisions relating to:

(a) the claiming of payments from the Election Campaigns Fund by parties and candidates, and the approval of those claims, and
(b) the review and certification of individual claims by auditors, and
(c) the making of payments to parties and candidates from the Election Campaigns Fund, including preliminary payments, and
(d) an offence of making false statements in claims for payment.

Administration and Policy Development Funds

Schedule 2 [4] substitutes Part 6A of the principal Act. The current Part 6A provides for the Political Education Fund. Proposed Part 6A instead establishes the Administration Fund and the Policy Development Fund, which will both be kept by the Authority. Parties with elected members and Independent members are eligible for annual payments from the Administration Fund for administrative or operating expenses of the party or the Independent member during the year. The amount of payments range from $80,000 for each elected member of the party (with an annual maximum of $2 million) and the annual maximum amount of $80,000 for an independent member). Parties that are not eligible for payment from the Administration Fund may be eligible for payment from the Policy Development Fund of the amount of actual policy development expenditure incurred by or on behalf of the party during the year. The amount of payments range from a maximum of 25 cents per first preference vote received by candidates of the party at the last election, with a minimum payment of $5,000 during the first 8 years.

The proposed Part also contains general provisions relating to the two Funds, including provisions relating to the procedure for claiming payments. It will be an offence to make a false statement in relation to a claim under the proposed Part.

Other provisions

Schedule 2 [5] substitutes Schedule 1 to the principal Act. Proposed Schedule 1 will provide for the adjustment for inflation of political donation caps, electoral communication expenditure caps and administrative funding and policy development caps specified in the proposed provisions.

Schedule 2 [1] and [2] make related changes to definitions used in the proposed provisions.

Schedule 3 Miscellaneous amendments to *Election Funding and Disclosures Act 1981* No 78

Schedule 3 [11] requires a candidate or group to appoint one official agent. Elected members and third-party campaigners may appoint an official agent in certain circumstances. **Schedule 3 [1]–[5]** make related consequential amendments to the definition of ***official agent*** and insert a definition of ***ex officio official agent***. **Schedule 3 [8]** provides for the deemed registration of certain nominated candidates and groups.

Schedule 3 [15] clarifies an offence relating to payments for electoral expenditure.

Schedule 3 [9] requires the Authority to keep a register of third-party campaigners for each election.

Schedule 3 [20] and [21] extend the enforcement powers of the Authority under the principal Act.

Schedule 3 [22] provides the Authority with the power to require a person to give the Authority documents and information. It also provides that the Authority may enter into agreements with persons affected by the Act for the purpose of ensuring the persons comply with the Act. The agreements may be enforced by the Supreme Court.

Schedule 3 [23] enables penalty notices to be issued for offences against the principal Act or the regulations made under that Act.

Schedule 3 [10], [12]–[14] and [16]–[19] contain minor miscellaneous amendments.

Schedule 3 [24] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Issues Considered by the Committee

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

Issue: Freedom of Speech

28. The Committee notes that one of the major reforms proposed by this Bill is to place a cap on electoral campaign expenditure during an election period. That is, candidates for election to either the Legislative Assembly are limited in how much they can spend on electoral communication during the course of an election period. The proposed expenditure cap for individual candidates in a State election under proposed section 95F of the Bill varies depending on whether the candidate is endorsed by a political party ($100,000) or whether they are an independent candidate ($150,000). The caps also vary for candidates for election to the Legislative Council depending on party or grouping status. Lastly, there are caps in place for third-party campaigners, in which the cap for state-wide campaigning is considerably higher ($525,000 - $1,050,000) but far more limited for campaigns in individual Assembly seats ($20,000).

29. It is proposed under clause 12 of the Bill that only communication costs will be subject to the expenditure caps. This will include advertising, printing and distribution costs, telecommunications and Internet costs, expenditure incurred in employing staff engaged in election campaigning and certain office expenses. The expenditure caps will not include expenditure on travel and accommodation, research or costs involved in fundraising.

30. The purpose of this proposal is to limit the so-called 'arms race' of campaign expenditure. This will be achieved by limiting the extent to which one party becomes unfairly advantaged merely because that party has access to greater funds than their opponents and is therefore able to spend more than their opponents. The Committee appreciates the public interest that exists in facilitating a framework in which all candidates participate on a more level playing field and promoting fairer competition by minimising the difference in financial resources between contestants.

31. The Bill will also lower the barriers to participation by new entrants to the political system, resulting in more candidates and furthering democratic plurality and choice. The Committee recognises the public interest that exists in passage of these reforms.

32. However, it is incumbent upon the Committee to identify those provisions in a Bill which may impact on individual rights. In this respect, the Bill may fetter the freedom of speech each candidate, or other advocate such as third-party campaigners, would otherwise have when contesting an election. This is because the nature of contemporary electoral communication requires candidates to spend significant sums on producing campaign literature and purchasing advertisements. For example,

during the 2007 State election, campaign expenditure by all parties and candidates amounted to $36.4 million, approximately 73% of which was spent on advertising.[1]

33. Under the Bill, when a candidate running for election, or their advocate, reaches their stipulated spending cap, they would be in breach for any extra communication expenditure incurred over that cap. In other words, any additional pamphlet produced, telephone call to constituents made or advertisement published would constitute a breach. The Committee notes that as this would compel candidates and their advocates to withdraw from any further 'electoral communicating' in which expense is incurred, it necessarily follows that their capacity to freely engage with the electorate is fettered.

34. It is fair to assert that candidates or advocates should be free to campaign largely unencumbered and that a free and fair democracy should not be setting controls that limit the extent to which a candidate or advocate can campaign. For the most part, 'contributing to the debate' is a costly exercise and it may appear counter-intuitive to the proper functioning of a democracy to impose restrictions that ultimately curtail such debate. This is especially the case during an election campaign, where candidates are expected to introduce themselves to the electorate, enunciate their policies and view, and generally inform the electorate of their credentials for office.

35. The issue of limiting the freedom of political communication was considered by the High Court in *Lange v Australian Broadcasting Corporation.* That case considered Commonwealth legislation which banned political advertising during election campaigns and provided for mandatory free political advertising time.

36. The High Court found the legislation to be unconstitutional. Relevantly, the High Court found that the implied freedom of communication on matters of government and politics was an 'indispensible incident' of the system of government established by the Constitution. The High Court established what has since been described as the *Lange Test* in which:

> 'Laws that ban or impose limits upon political donations or election campaign expenditure are likely to be regarded as burdening the constitutionally implied freedom of political communication. This is because they have the effect of limiting the quantity and breadth of communication about political matters. Such laws will only be held valid by the courts if they are reasonably and appropriately adapted to serving a legitimate end in a manner which is compatible with the system of representative and responsible government prescribed by the Commonwealth Constitution.'[2]

37. It is unclear whether the *Lange Test* applies for the purposes of NSW election campaigns and therefore whether there is an implied freedom of communication under the NSW Constitution.[3] In any case, it is not the role of the Committee to determine this constitutional issue nor, assuming that the *Lange Test* applies in NSW, is it the role of the Committee to test if the proposed expenditure caps set out in the Bill satisfy Constitutional thresholds.

[1] Legislative Council, *Electoral and Political Party Funding in NSW,* June 2008 at p 123.
[2] Dr Anne Twomey, *The reform of political donations, expenditure and funding,* November 2008.
[3] Joint Standing Committee on Electoral Matters, *Public Funding of Election Campaigns,* Parliament of New South Wales, March 2010 at p 63.

38. Notwithstanding, it is imperative that the Committee raise the proposition for further consideration. As the Bill sets caps on campaign expenditure it necessarily follows that it could restrict the capacity of a candidate or advocate to produce additional election material. This may constitute a fettering of free speech.

39. However, it is noted that the Premier in her Agreement in Principle speech stated that:

> Caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. Parties, groups and candidates must have sufficient resources to contest elections and engage in debate about political matters, or there is a risk that the High Court may find that the reforms invalidly limit the implied freedom of political communication.

40. Accordingly, the Committee refers this matter to Parliament for its further consideration to ensure that the right of an individual to engage in free speech is not unduly trespassed by passage of the Bill.

41. **The Committee notes that one of the major reforms proposed by this Bill is to place a cap on electoral campaign expenditure during an election period. That is, candidates for election, or their advocates, are limited in how much they can spend on electoral communication during the course of an election period.**

42. **The Committee appreciates the public interest that exists in facilitating a framework in which all candidates participate on a more level playing field and the impact this has on promoting fair competition for election by minimising the difference in financial resources between contestants.**

43. **Notwithstanding, it is incumbent upon the Committee to identify issues that impact on individual rights. In this respect, the Bill may fetter the freedom of speech each candidate or advocate would otherwise have when contesting an election. Under the Bill, when a candidate running for election, or their advocate, reaches their stipulated spending cap, they would be in breach for any extra communication expenditure incurred over that cap.**

44. **However, the reasonableness of any such restrictions must be tested against the overall objectives of the Act which is to ensure that no one voice is dominant. The Committee notes that the Premier in her Agreement in Principle speech stated that:**

> **Caps on donations require a significant increase in public funding to reduce the risk of such caps being invalid under the Commonwealth Constitution. Parties, groups and candidates must have sufficient resources to contest elections and engage in debate about political matters, or there is a risk that the High Court may find that the reforms invalidly limit the implied freedom of political communication.**

45. **The Committee refers this matter to Parliament for its further consideration to ensure that the right of an individual to engage in free speech is not unduly trespassed by passage of the Bill.**

The Committee makes no further comment on this Bill.

5. ELECTRICITY SUPPLY AMENDMENT (SOLAR BONUS SCHEME) BILL 2010

Date Introduced:	27 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Paul Lynch MP
Portfolio:	Energy

The Bill passed both Houses on 27 October 2010 and was assented to on 1 November 2010. The preparation of this report was done in accordance with the *Legislation Review Act 1987* with respect to commenting on Bills as originally presented to Parliament.

Purpose and Description

20. This Bill amends the *Electricity Supply Act 1995* with respect to the solar bonus scheme (being the scheme for the payment of electricity supplied to the network by small retail customers using complying generators).

21. The Bill introduces a new tariff rate of 20¢ per kilowatt hour to apply to new small retail customers who join the scheme. This new rate is designed to closely reflect the fall in system prices. A different rate may be prescribed in regulations. This will allow flexibility to deal quickly with new market conditions in the future. Other scheme criteria, such as maximum system size and the end date for the scheme, remain unchanged.

22. It clarifies that existing customers who replace a generator can continue to receive the 60¢ tariff rate. However, a customer will no longer be eligible for the higher rate should the size of the generator be increased on or after 28 October 2010. If a customer increases the size of his or her generator, he or she will cease to participate in the original scheme and will need to apply to join the new scheme. These provisions aim to ensure existing customers continue to receive the benefits of the 60¢ scheme but that the scheme costs are limited.

23. An overall scheme capacity limit of 300 megawatts will be introduced. This is a cap on the maximum capacity of generators that may receive tariff payments under the scheme. This is a cap on the scheme costs, not a cap on the number of renewable energy generators installed under the scheme. Distributors will be required to provide regular reports on total generating capacity of all generators connected and applications to be connected. Based on these reports, Industry and Investment New South Wales will publish the scheme capacity results fortnightly on its website.

24. Once the scheme capacity has been reached, a public declaration will be posted. Any small retail customer who has not been connected under the scheme once the declaration has been made that scheme capacity has been reached, will not be eligible to receive a credit under section 15A (5) of the Act.

25. An offence will be created if a person fails to notify a distributor (the network business), of any change in a person's circumstances that may affect the person's

eligibility for the scheme. The maximum penalty is a fine of up to $110,000. Customers will have seven days to notify of the change to their network business. Under the Bill, customers can be required to provide information by statutory declaration in order to determine their eligibility for the scheme.

26. The Bill also provides for future scheme reviews in 2012 and as soon as possible after 31 December 2016, to consider whether the scheme achieved its policy objectives. Reports on the outcomes of the reviews will be tabled in Parliament.

Background

27. The New South Wales Solar Bonus Scheme commenced on 1 January 2010 and runs for seven years. Currently, the scheme pays households and small businesses a feed-in tariff of $0.60 per kilowatt hour for all electricity produced and exported to the grid by small-scale solar systems or wind turbines up to 10 kilowatts capacity.

28. Scheme capacity is now around 100 megawatts, up from around 25 megawatts when it first began. More than 50,000 customers have connected renewable energy generators to the grid, up from around 15,000 when the scheme began, and applications to the scheme are continuing to grow.

29. A review of the scheme has been undertaken to examine whether the policy objectives of the scheme remain valid and whether the terms of the Act remain appropriate. Public feedback was sought until 30 September 2010. More than 250 submissions were received. Industry and Investment New South Wales has considered feedback from the public and obtained expert advice from modelling experts AECOM Australia. A report on the outcomes of the review will be tabled in both Houses of Parliament as required by the legislation.

30. The review found that the scheme has been successful in driving increased small-scale renewable energy generation in New South Wales. According to the Agreement in Principle speech:

> Modelling forecasts installed capacity under the scheme will grow to around 960 megawatts by the end of the scheme, if it remains unchanged. Total scheme payments under this scenario reach around $4 billion. Under the National Electricity Rules, these payments will be passed onto customers in the form of higher electricity network charges.

31. The Agreement in Principle speech explained that:

> Customers will continue to receive payment for all electricity exported to the grid. This is known as a gross tariff and is strongly supported by many customers and the renewable energy industry as it provides more certainty as to the likely payments customers may receive. Customers who prefer to receive payment for electricity exported to the grid in excess of that used at the premises may choose to do so. This is known as a net tariff. Some customers may prefer to receive a net tariff in order to take advantage of bill reductions over the longer term and to avoid the costs associated with switching to gross metering arrangements.

32. The speech continued to explain:

> Existing customers will continue to receive the original tariff rate. This is to ensure no unfairness to customers who have already connected to the grid. The Government recognises that there are many customers who may have already purchased or leased

> an eligible generator, or entered into arrangements to do so, who have not yet been connected to the grid and will be concerned about what the changes mean for them. These customers may be eligible for the original tariff rate, provided they lodge their application to connect their system to the grid by 18 November 2010. These customers need to act quickly to lodge their application to connect to the grid on time or make sure their installer does so on their behalf. This date will not be extended. The Bill does not permit it. Customers and installers need to act promptly and responsibly.

33. The Agreement in Principle also stated that:

> Any potential future closure following the 300 megawatt capacity being reached will not impact the tariff payments for existing customers for the life of the scheme, so long as those customers continue to operate within the scheme requirements.

34. A formal inquiry will be set up to investigate options to reduce or defer electricity network charges and place downward pressure on electricity prices. The inquiry will be conducted by Dr Tom Parry, Chair of the Australian Energy Market Operator and former Chair of the Independent Pricing and Regulatory Tribunal, and Mr Mark Duffy, Deputy Director General, Minerals and Energy, Industry and Investment NSW.

35. According to the Agreement in Principle speech:

> The inquiry will consider options to reduce or defer network charges within the existing regulatory frameworks and independent regulatory pricing processes. Regulated retail electricity prices are determined by the Independent Pricing and Regulatory Tribunal and network charges are regulated by the independent Australian Energy Regulator…Network costs represent almost 50 per cent of customers' final electricity bills and are the largest driver for electricity price increases. The retail and wholesale components of retail prices for small customers on standard contracts will not be examined as part of the inquiry. There is no scope under the *Electricity Supply Act* for the Government to set aside the regulators' determinations. However, the inquiry will be asked to identify options for any identified network cost reductions being passed through to consumers from 1 July 2011. The inquiry is expected to provide a draft report to the Government by the end of this year.

The Bill

36. The object of this Bill is to make the following changes with respect to the solar bonus scheme (being the scheme for the payment of electricity supplied to the network by small retail customers using complying generators):

> (a) reducing the tariff paid (from $0.60 per kilowatt hour to $0.20 per kilowatt hour) to new small retail customers who join the scheme,
>
> (b) stopping payments under the scheme to persons who join the scheme after the total generating capacity under the scheme has reached 300 megawatts,
>
> (c) providing for the provision of information by statutory declaration to prove a person's eligibility to have a credit recorded under the scheme,
>
> (d) requiring a person to provide notice of any change of circumstances that may affect the person's eligibility to have a credit recorded under the scheme,
>
> (e) changing the frequency at which distribution network service providers are to provide information about the scheme,

(f) permitting a small retail customer to elect to receive a credit under the scheme for the net rather than the gross electricity supplied by the customer,

(g) providing for 2 further reviews of the scheme by the Minister for Energy,

(h) providing that compensation is not payable by the State in relation to the scheme or changes to the scheme.

37. **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 at the beginning of the day following the day on which this Bill is first introduced into Parliament.

Schedule 1 Amendment of *Electricity Supply Act 1995* No 94:

Schedule 1 [1] reduces the rate at which a credit is recorded in respect of a small retail customer to $0.20 (or such other amount as may be prescribed by the regulations) per kilowatt hour for electricity that is produced by a complying generator and supplied to the distribution network by the small retail customer. **Schedule 1 [4]** permits the regulations to contain provisions of a savings or transitional nature consequent on the making of a regulation that prescribes a different amount. **Schedule 1 [10] and [11]** make consequential amendments. **Schedule 1 [12]** provides that the old higher rate of $0.60 per kilowatt hour continues to apply to electricity that a small retail customer supplies to the distribution network using any of the following:

(a) a complying generator that was first connected to the distribution network before the commencement of the proposed Act,

(b) a complying generator that was first connected to the distribution network after that commencement if:

(i) before that commencement the small retail customer concerned purchased or leased the generator or entered into a binding agreement to purchase or lease the generator, and

(ii) no later than 21 days after that commencement, the distribution network service provider received an application made by or on behalf of the small retail customer for the connection of the generator to the distribution network, and

(iii) any requirements of the regulations as to evidence to be provided in connection with the requirements above have been complied with,

(c) a complying generator connected in circumstances prescribed by the regulations,

(d) a complying generator that replaces a generator referred to above at the same premises that is of no greater capacity than the generator that is replaced.

However, that higher rate ceases to apply in respect of electricity produced by a generator if the capacity of the generator is increased. The higher rate also ceases to apply, subject to

the regulations, if there is a change in the person in respect of whom a credit is recorded for electricity produced by the generator.

Schedule 1 [2] and [3] require a distribution network service provider to provide information under section 15A (7) of the *Electricity Supply Act 1995* (the ***Principal Act***) to the Minister for Energy (the ***Minister***) and the Director-General of the Department of Industry and Investment at such times as may be prescribed by the regulations rather than on a 6 monthly basis.

Schedule 1 [4] permits the Director-General of the Department of Industry and Investment or a distribution network service provider to require a person to provide information by statutory declaration in order to determine the person's eligibility to have a credit recorded for electricity supplied to the distribution network. It also creates an offence (maximum penalty $110,000) if a person fails to notify a distribution network service provider of any change in the person's circumstances that may affect the person's eligibility to have any such credit recorded by the provider. The notification is required to take place within 7 days after the change. **Schedule 1 [4]** also permits the Minister to declare, by notice, that, as from a specified date, no payments will be made under the solar bonus scheme in respect of new applicants. A notice can be published only if the Minister is satisfied that the total generating capacity of all complying generators installed and connected under section 15A of the Principal Act has reached 300 megawatts. A distribution network service provider is not to record a credit, and a retail supplier is not to pay an amount, under the scheme in respect of electricity produced by a generator that is first connected to the distribution network on or after the date specified in any such notice.

Schedule 1 [5] provides for the repeal of section 34A of the Principal Act at the same time that section 15A of that Act is repealed.

Schedule 1 [6] provides that compensation is not payable by or on behalf of the State in relation to the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the proposed Act (including a provision inserted into the Principal Act by either of those Acts and an instrument made under any such provision).

Schedule 1 [7] and [8] provide for 2 further reviews of the solar bonus scheme by the Minister. The first is to be undertaken as soon as possible after 1 July 2012 and is to consider whether the policy objectives of the scheme remain valid and whether the terms of the Principal Act remain appropriate for securing those objectives. The second is to be undertaken as soon as possible after 31 December 2016 and is to consider whether the scheme achieved its policy objectives.

Schedule 1 [9] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [12] also permits a small retail customer to elect to receive a credit on a net basis for electricity that is produced by a complying generator and supplied to the distribution network by the small retail customer (that is, for electricity supplied to the distribution network in excess of that being used by the customer).

Issues Considered by the Committee

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

Issue: Denial of Compensation – Amendment of *Electricity Supply Act 1995* – Schedule 1 [6] – proposed section 179A (1A) – Compensation not payable:

38. The insertion of the proposed section 179A (1A) in Schedule 1 [6] provides that compensation is not payable by or on behalf of the State in relation to the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the proposed Act (including a provision inserted into the Principal Act by either of those Acts and an instrument made under any such provision).

39. **The Committee is of the view that the right to seek compensation is an important personal right and that such a right should not be removed or restricted by legislation unless there is a compelling public interest in doing so. The Committee refers to Parliament to consider whether there is such a compelling interest for the proposed section 179A (1A) in schedule 1 [6] or whether it may trespass unduly on individual rights by removing the right to seek compensation in relation to the enactment, making or operation of the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* or the proposed Act.**

Issue: Retrospectivity – Clause 2 – Commencement – Schedule 1 – Amendment of *Electricity Supply Act 1995*:

40. Clause 2 reads: This Act is taken to have commenced at the beginning of the day following the day on which the Bill for this Act was first introduced into Parliament.

41. **The Committee will always be concerned where provisions are taken to have commenced on the day following the day on which the Bill is introduced into Parliament rather than after its assent. The Committee notes that the provisions will then apply retrospectively, and refers clause 2 to Parliament for consideration as to whether it may adversely impact or unduly trespass on personal rights.**

The Committee makes no further comment on this Bill.

6. POLICE REGULATION (SUPERANNUATION) AMENDMENT BILL 2010

Date Introduced:	29 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	Hon Michael Daley MP
Portfolio:	Police and Finance

Purpose and Description

20. This Bill amends the *Police Regulation (Superannuation) Act 1906* in relation to the discharge, and entitlement to superannuation, of members of the Police Force who are medically unfit.

21. The Bill inserts a new section 15B into the Act. The section will apply to a pre-1988 officer, who has been on sick leave for at least 12 months in the previous 18 months and whose health is, in the opinion of a medical practitioner, unlikely to improve sufficiently to enable them to return to duty. The section provides the Commissioner of Police with the ability to apply to the STC (Police Superannuation Fund) for a determination that the member is incapable of exercising the functions of a police officer as set out in section 14 (1) of the *Police Act 1990*.

22. The discharged member will be entitled to the relevant superannuation benefit, depending on whether the infirmity was or was not caused by the member having been hurt on duty.

23. The Commissioner of Police will be able to provide the member with a copy of the proposed application after the member has been on sick leave for at least eight months. The member will then have 28 days to notify the Commissioner of any other infirmities that should be listed as part of the application.

24. The Commissioner of Police may also supply to the STC (Police Superannuation Fund) medical information about the member without the need to obtain the consent of the member and despite any restrictions in applicable privacy legislation. A certificate enabling medical discharge of the member may be issued by the STC on the basis that the infirmity concerned was caused by the member having been hurt on duty or on the basis that it was not so caused. The member will not be prevented from making their own application to STC for a benefit under the *Police Regulation (Superannuation) Act 1906*, or for the issue of a certificate under this Act relating to the infirmity of the member.

25. The Bill provides for applications to be made under section 8 of the *Police Regulation (Superannuation) Act 1906* and, if applicable, under section 10, which covers officers hurt on duty. If a certificate is issued on the basis that the member was not hurt on duty, a superannuation benefit can later be paid at the higher rate backdated to the date of discharge if the infirmity is later determined by the Commissioner of Police or on appeal, to have been caused by the member having been hurt on duty.

Background

26. Police officers employed prior to April 1988 are known as pre '88 officers. They are covered by the compulsory Police Superannuation Scheme. The scheme provides for a pension to be paid if an officer retires from the NSW Police Force on medical grounds. The benefit is received following the determination of an application made to the SAS Trustee Corporation, or STC (Police Superannuation Fund), the trustee of the scheme. The STC must be satisfied that a member has become incapable of discharging their duties of office, based on the medical evidence provided with the application.

27. At present, the STC can only accept medical discharge papers from the individual officer. This means the Commissioner of Police cannot exercise his power to medically discharge an officer without running the risk of the officer losing their membership of the scheme and access to benefits.

28. According to the Agreement in Principle speech:

> The Human Resources Command of the NSW Police Force has undertaken extensive consultation with the Police Association of NSW, which…has indicated its support for the Bill.

The Bill

29. The object of this Bill is to amend the *Police Regulation (Superannuation) Act 1906* in relation to the discharge of members of the Police Force (employed before 1 April 1988) who have been on long-term sick leave, whose health is unlikely to improve to enable a return to duty and who are determined by the trustees of the Police Superannuation Fund (on medical advice) to be incapable of continuing to exercise the functions of a police officer. The Bill enables the Commissioner of Police to apply for such a determination of the trustees, in which case the discharged member will be entitled to the relevant superannuation benefit depending on whether the infirmity was or was not caused by the member having been hurt on duty.

30. **Outline of provisions**

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

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

Schedule 1 Amendment of *Police Regulation (Superannuation) Act 1906* No 28

The Schedule inserts new section 15B into the Act to give effect to the object outlined in the above Overview. The proposed new section includes the following provisions:

> (a) The section applies to a member of the Police Force who continues to be a member of the closed Police Superannuation Fund, namely members employed before 1 April 1988.
>
> (b) The section applies to any such member who has been on sick leave for at least 12 months in the previous 18 months and whose health, in the opinion of a

medical practitioner, is not likely to improve sufficiently to enable the member to return to duty.

(c) The Commissioner of Police is authorised to apply to the trustees of the Police Superannuation Fund (***STC***) for a determination that the member is incapable, from infirmity of body or mind, of personally exercising the functions of a police officer referred to in section 14 (1) of the *Police Act 1990* (the certificate is a pre-requisite to the medical discharge and superannuation entitlement of a member who has not reached the retirement age).

(d) Before making such an application, the Commissioner is to provide the member with a copy of the proposed application detailing the member's infirmities (and supporting information) and give the member 28 days to notify the Commissioner of any other infirmities and whether any of the infirmities were caused by the member having been hurt on duty. Discharge of a member hurt on duty entitles the member to a higher superannuation benefit.

(e) The Commissioner may provide a copy of the proposed application after the member has been on sick leave for at least 8 months to enable an assessment by the Commissioner before the application is formally made to STC whether any further infirmities notified by the member were caused by the member having been hurt on duty.

(f) The Commissioner may supply to STC medical information about the member without the need to obtain the consent of the member and despite any restrictions in applicable privacy legislation.

(g) A certificate enabling the medical discharge of the member may be issued by STC on the basis that the infirmity concerned was caused by the member having been hurt on duty or on the basis it was not so caused. If the certificate is issued on the basis that the member was not hurt on duty, a superannuation benefit can later be paid at the higher rate backdated to the date of discharge if the infirmity concerned is later determined by the Commissioner or on appeal to have been caused by the member having been hurt on duty.

(h) The period of sick leave referred to in the section will include periods of sick leave with or without pay and periods of sick leave before or after the commencement of the proposed section.

Issues Considered by the Committee

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

Issue: Privacy – proposed section 15B (13) – Schedule 1 – Amendment of *Police Regulation (Superannuation) Act 1906* – Discharge of members medically unfit:

31. This Bill proposes that the Commissioner of Police may supply to STC (Police Superannuation Fund) medical information about the member of the police force without the need to obtain the consent of the member and despite any restrictions in applicable privacy legislation.

32. Proposed section 15B (12) reads: The Commissioner of Police may provide to STC, to any medical practitioner nominated by STC or to any medical practitioner asked to provide an opinion referred to in subsection (1) (c), for use in determining whether to issue a certificate or whether to provide an opinion, any medical certificate or other information in the possession of the Commissioner that is relevant to that determination.

33. Proposed section 15B (13) then provides that: Any such information may be so provided and used, with or without the consent of the member of the police force concerned and despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

34. Proposed section 15B (13) raises concerns regarding the invasion of privacy, especially with respect to the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

35. The right to privacy is also well-recognised under Article 17 of the *International Covenant on Civil and Political Rights.*

36. **The Committee considers the proposed section 15B (13) which enables the Commissioner of Police may supply to STC (Police Superannuation Fund) medical information about the member of the police force, without the need to obtain the consent of the member despite any restrictions in applicable privacy legislation, may have the potential to unduly trespass on an individual's right to privacy.**

37. **Accordingly, the Committee refers proposed section 15B (13) of the Bill to Parliament for consideration.**

The Committee makes no further comment on this Bill.

7. RADIATION CONTROL AMENDMENT BILL 2010

Date Introduced:	20 October 2010
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon. Frank Sartor MP
Portfolio:	Environment

Purpose and Description

20. The object of this Bill is to make amendments to the *Radiation Control Act 1990.*

21. The proposed amendments will make changes with respect to licensing and accreditation for the handling of radioactive materials, in particular, by introducing security background checks.

22. The Bill also creates new offences relating to the improper handling of radioactive materials, as well as the giving of notices to deal with contraventions of the Act and dangerous situations. Similarly, new provisions are included that relate to the enforcement of undertakings, the recovery of costs and the granting of exemptions in certain situations.

23. Lastly, the Bill grants the Radiation Advisory Council with additional responsibilities as well as conferring onto the Minister responsible additional powers to make regulations on a number of minor matters.

Background

24. The Bill implements aspects of the Council of Australian Governments National Chemical, Biological, Radiological and Nuclear Security Strategy and progresses the implementation of the Code of Practice for the Security of Radioactive Sources.

25. According to the Agreement in Principle Speech:

> Since the last major review of the *Radiation Control Act* in2002, the significance of the security of radioactive sources has become increasingly important – for example, to prevent the deliberate misuse of radioactive material in acts of terrorism.
>
> The *Radiation Control Act 1990* was originally drafted to ensure safe storage, use and disposal of radioactive substances and radiation apparatus used in healthcare and other industries. This Bill augments the existing legislation, in particular in regard to the security of radioactive sources and safeguarding against the deliberate, as well as accidental, misuse of these substances.

26. There are between 40 and 50 locations in NSW in which these the types of radioactive material referred to in the Bill exist, and are used primarily for the sterilisation of medical supplies, irradiation of donated blood, in cancer research and treatment and in safety testing for engineered structures.

27. This Bill was developed in consultation with the New South Wales Radiation Advisory Council which itself includes representatives from key professional radiation associations. The council also includes representatives of other Government departments, including WorkCover and the Department of Health. In addition, the Department of Industry and Investment, the NSW Police Force and the Department of Premier and Cabinet were consulted. A discussion paper was released for public comment in 2009 in which additional comment was sought from the general public.

28. The Bill was introduced into Parliament on 20 October 2010, had passed both Houses without amendment on 28 October 2010 and is currently awaiting assent.

The Bill

29. **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 except for a number of specified provisions that are to commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Radiation Control Act 1990* No 13

Schedule 1 [1] provides that the objects of the *Radiation Control Act 1990* (the ***Principal Act***) include protecting security enhanced sources from misuse that may result in harm to people or the environment and promoting of the radiation protection principles.

Schedule 1 [2] omits some redundant definitions and inserts a number of new definitions for the purposes of the Principal Act. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [3] clarifies the status of notes in the Principal Act.

Schedule 1 [4] inserts proposed sections 5 and 5A. Proposed section 5 sets out the matters that the Environment Protection Authority (the ***Authority***) may take into consideration in determining whether a person is a fit and proper person to hold a licence or accreditation under the Principal Act. Proposed section 5A provides for certain of the functions of the Authority under the Principal Act to be exercised, in certain circumstances, by other public bodies instead of the Authority. In the case of radioactive ore those functions will be exercised by the Director-General of the Department of Industry and Investment. **Schedule 1 [24]** provides that a natural person who exercises functions under proposed section 5A on behalf of a public body is not personally liable for any thing the person does or omits to do in exercising those functions.

Schedule 1 [5] omits existing Part 2 (Regulatory controls) of the Principal Act and inserts proposed Parts 2 and 2A. Proposed Part 2 introduces 2 new classes of licence (a radiation management licence and a radiation user licence) and 2 classes of accreditation (accreditation as a consulting radiation expert and accreditation as a radiation security assessor).

The new licences relate to regulated material (which means radioactive substances, ionising radiation apparatus, non-ionising radiation apparatus of a kind prescribed by the regulations and sealed source devices). A person who owns, stores, sells, gives away or has

possession of regulated material (other than a person who has possession of the regulated material only for the purposes of transporting or using the material and in the case of a user, holds a radiation user licence in respect of the material) is a person responsible for the regulated material. Each person responsible for regulated material must hold a radiation management licence in respect of the material unless the Minister for Climate Change and the Environment grants an exemption (maximum penalty $165,000 in the case of a corporation or $27,500 or imprisonment for 2 years, or both, in any other case). Each person responsible for regulated material must also ensure that the regulated material is not sold, leased or given to, or stored, possessed or used by, any other person unless that other person is the holder of an appropriate licence (maximum penalty $165,000 in the case of a corporation or $27,500 or imprisonment for 2 years, or both, in any other case). A person who uses regulated material is required to hold a radiation user licence (maximum penalty $27,500 or imprisonment for 2 years, or both). A radiation user licence can only be issued to a natural person.

A person is not permitted to carry on any of the activities prescribed as the activities of a consulting radiation expert or a radiation security assessor unless the person holds the relevant accreditation (maximum penalty $11,000). An accreditation can only be granted to a natural person.

A person may apply to the Authority for a licence or accreditation or for a renewal or variation of a licence or accreditation held by the person. The Authority must (or may in the case of a renewal) refuse an application if the person is not a fit and proper person, the person fails to meet any requirements that are prescribed by the regulations or are set out in the National Directory, or in the case of a radiation user licence, the person does not have appropriate knowledge of radiation safety, or in the case of an accreditation, the person does not have sufficient expertise. The Authority may vary a licence or accreditation on its own motion or on the application of the holder of the licence or accreditation.

A licence or accreditation remains in force for the term specified by the Authority in the licence or accreditation. However, if an application to renew the licence is received by the Authority before, or within 60 days after, the end of that specified term, the licence or accreditation remains in force until the application is determined.

A licence or accreditation may be surrendered only with the written approval of the Authority. The Authority may, at its discretion, suspend or cancel a licence or accreditation. A decision to suspend or cancel a licence or accreditation does not take effect until the holder of the licence or accreditation has had an opportunity to appeal the decision to the District Court. A licence or accreditation may be suspended or cancelled, or the surrender of a licence or accreditation may be approved, unconditionally or subject to conditions. The former holder of a licence or accreditation that has been cancelled or surrendered, or the holder of a licence or accreditation that has been suspended, must comply with such conditions (maximum penalty in respect of a licence is $165,000 in the case of a corporation or $27,500 or imprisonment for 2 years, or both, in any other case and the maximum penalty in respect of an accreditation is $11,000).

Conditions of licences and accreditations and conditions of a surrender, cancellation or suspension have continuing effect even if any such condition specifies a time by which, or period within which, the condition must be complied with.

The Authority is required to maintain a public register of information about licences and is to make the register available to members of the public to inspect free of charge at its principal office during ordinary office hours and on its website.

Proposed Part 2A provides for the security of security enhanced sources (being sealed radioactive sources prescribed by the regulations). Each person responsible for a security enhanced source (which means each person who is responsible for the regulated material contained in the source) must ensure that a source security plan is made that addresses the security of the source and if the source is to be transported, a source transport security plan is made that addresses the security of the source during transport.

Each person responsible is also required to ensure that a security plan is supplied to the Authority as required, is reviewed periodically and is implemented and complied with. A security plan must set out how the source is to be protected from unauthorised access, nominate a natural person who is to be responsible for implementing the plan and deal with any other matters that may be prescribed by the regulations. A security plan cannot be made or amended unless a radiation security assessor has reviewed and endorsed the plan. A person who has been given a copy of a security plan or part of such a plan in respect of a security enhanced source must comply with the plan or the part in the person's dealings with the source. It is an offence if a person fails to comply with the above requirements in relation to a security plan (maximum penalty $165,000 in the case of a corporation or $27,500 in any other case).

Each responsible person for a security enhanced source must also ensure that the source is protected by any security protection measures that may be prescribed with respect to the source. A person must not interfere with any such measure unless the interference occurs during repair or maintenance, is to a measure that is no longer required, is by the Authority or an authorised officer or by a person acting in accordance with a direction or notice given under the Principal Act or occurs in circumstances prescribed by the regulations. It is an offence if a person fails to comply with the above requirements in relation to a security measure (maximum penalty $165,000 in the case of a corporation or $27,500 in any other case). Each person responsible for a security enhanced source prescribed by the regulations must also ensure that natural persons who deal with the source and natural persons prescribed by the regulations have undergone and satisfied an identity check. Each person responsible for a security enhanced source must ensure that certain natural persons have undergone and satisfied a security check including a person nominated as being responsible for implementing a security plan in respect of the source, a person who transports the source, any person prescribed by the regulations and if the source is prescribed by the regulations, a person who deals with the source. Certain persons are exempt from the requirement for an identification or security check if under the direct supervision of another person at all times when engaged in the activity in respect of which the check would otherwise be required. A person must not engage in any activity for which the person is required to undergo a check unless the person has undergone and satisfied that check. It is an offence if a person fails to comply with the above requirements in relation to a check (maximum penalty $165,000 in the case of a corporation or $27,500 in any other case).

Schedule 1 [6] substitutes sections 18 and 19 of the Principal Act. Proposed section 18 permits an authorised officer to serve a notice on a person if the officer believes on reasonable grounds that the person is, or is likely to become, responsible for unnecessary exposure to, or contamination by, radiation or for a contravention of the Principal Act, the

regulations or a condition of a licence or accreditation (including a condition of a suspension, cancellation or surrender of a licence or accreditation). A person on whom a notice is served must comply with the notice and pay the prescribed fee (maximum penalty $22,000). A person may appeal to the District Court against a decision of the Authority under the proposed section. Proposed section 19 provides for the Authority to give directions if the Authority considers that a dangerous or potentially dangerous situation exists involving actual or threatened exposure of any person, animal or thing or the environment to an excessive level of radiation or contamination by regulated material. A person to whom a direction is given must comply with the direction (maximum penalty $165,000 in the case of a corporation or $27,500 or imprisonment for 2 years, or both, in any other case) and pay the prescribed fee (maximum penalty $22,000). **Schedule 1 [12]** permits the Authority to require a person, who has been served with a notice under proposed section 18 or given a direction under proposed section 19, to pay all reasonable costs incurred by the Authority in monitoring action under the notice or direction, ensuring compliance with the notice or direction and other associated matters.

Schedule 1 [7] provides for a higher penalty for any offence against the Principal Act if it is proved beyond reasonable doubt that the person convicted of the offence knew that its commission was likely to cause serious harm to a person, animal or thing or the environment by exposure to radiation. In such a case the maximum penalty is $1,100,000 in the case of a corporation or $165,000 or imprisonment for 2 years, or both, in any other case.

Schedule 1 [8] permits the Authority to accept a written undertaking from a person whom the Authority reasonably believes to have committed an offence under the Principal Act. If the person breaches the undertaking, the Authority can apply to the District Court for certain orders including an order that orders the person to pay an amount to the Sate or an order suspending or cancelling any licence or accreditation held by the person.

Schedule 1 [10] permits proceedings for an offence under the Principal Act to be commenced within 12 months after evidence of the alleged offence first comes to the attention of an authorised officer in addition to being commenced within 12 months after the date on which the offence is alleged to have been committed.

Schedule 1 [11] provides for a penalty notice to be withdrawn within 28 days after it is served. In such a case any amount paid under the notice is to be paid back and further proceedings may be commenced as if the penalty notice had never been served.

Schedule 1 [13] provides for the Authority to impose conditions on a radiation management licence (or conditions on the suspension, cancellation or surrender of such a licence) to provide financial assurances to guarantee funding for works and programs required under the licence. The amount of financial assurance cannot be more than the cost of carrying out the work or program. If the holder or former holder of a licence fails to carry out the work or program, the Authority may carry it out or direct another person to carry it out and claim the cost of carrying it out from the assurance.

Schedule 1 [15] and [16] add an additional member to the Radiation Advisory Council. The additional member is to be a person with expertise in mine radiation safety. **Schedule 1 [14]** renames Part 4 of the Principal Act to reflect that the provisions in the Part deal with the Council and **Schedule 1 [18]** ensures all provisions dealing with the Council are in that Part.

Schedule 1 [19] creates an offence (maximum penalty $165,000 in the case of a corporation or $27,500 or imprisonment for 2 years, or both, in any other case) if a person abandons any radioactive substance without reasonable excuse.

Schedule 1 [20] omits sections 35 and 36 of the Principal Act and inserts proposed sections 35–36B. Proposed section 35 provides for the issuing, giving or service of notices or other documents under the Principal Act. Proposed section 36 provides for a number of evidentiary matters including that the holder of a radiation management licence is taken to be a person responsible for the regulated material to which the licence relates. It also allows the Director-General of the Department of Environment, Climate Change and Water to give a certificate certifying certain matters. Proposed section 36A provides for appeals to the District Court against certain decisions of the Authority. Proposed section 36B creates an offence (maximum penalty $165,000 in the case of a corporation or $27,500 in any other case) if a person provides false or misleading information in certain circumstances.

Schedule 1 [23] provides that the Authority may exempt a person from compliance with all or any specified provision of the Principal Act in an emergency or in circumstances where it is not practicable to comply and the Authority is satisfied that non-compliance will not have any significant adverse effect on human health, property or the environment.

Schedule 1 [25] provides for a review of the Principal Act to be undertaken as soon as practicable after the period of 10 years after the commencement of the proposed amendment.

Schedule 1 [27] authorises the making of regulations for or with respect to any matter relating to the security of radioactive substances, radiation apparatus and sealed radioactive sources.

Schedule 1 [28] increases the maximum penalty that may be imposed for an offence in the regulations to $44,000 in the case of an offence committed by a corporation and $22,000 in any other case.

Schedule 1 [32] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [34] inserts a number of savings and transitional provisions in Schedule 2 to the Principal Act consequential on the amendments made by the proposed Act.

Schedule 1 [17] and [26] are consequential on the substitution of Part 2 of the Principal Act.

Schedule 1 [21], [22], [30] and [31] update cross references.

Schedule 1 [29] and [33] omit redundant provisions.

Issues Considered by the Committee

30. **The Committee has not identified any issues under s8A(1)(b) of the *Legislation Review Act 1987.***

The Committee makes no further comment on this Bill.

Appendix 1: Index of Bills Reported on in 2010

	Digest Number
Adoption Amendment (Same Sex Couples) Bill 2010*	10
Adoption Amendment (Same Sex Couples) Bill (No. 2) 2010*	11
Appropriation Bill 2010	9
Appropriation (Parliament) Bill 2010	9
Appropriation (Special Offices) Bill 2010	9
Australian Jockey and Sydney Turf Clubs Merger Bill 2010	15
Banana Industry Repeal Bill 2010	8
Building and Construction Industry Long Service Payments Amendment Bill 2009	1
Carers Recognition Bill 2010*	3
Carers Recognition Bill 2010*	5
Carers (Recognition) Bill 2010	5
Casino Control Amendment Bill 2010	2
Central Coast Water Corporation Amendment Bill 2010	13
Charter of Budget Honesty Amendment (Independent Election Costings) Bill 2010*	5
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	10
Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010*	15
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	4
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	12
Coal Mine Health and Safety Amendment Bill 2010	4
Coastal Protection and Other Legislation Amendment Bill 2010	9
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	13
Community Justice Centres Amendment Bill 2010	13
Community Relations Commission and Principles of Multiculturalism Amendment Bill 2010	8
Companion Animals Amendment (Dogs in Outside Eating Areas) Bill 2010*	4
Companion Animals Amendment (Outdoor Dining Areas) Bill 2010	5
Constitution Amendment (Recognition of Aboriginal People) Bill 2010	12
Court Information Bill 2010	4
Court Suppression and Non-publication Orders Bill 2010	15
Courts and Crimes Legislation Amendment Bill 2010	14

	Digest Number
Courts Legislation Amendment Bill 2010	9
Credit (Commonwealth Powers) Bill 2010	2
Crimes (Administration of Sentences) Amendment Bill 2010	2
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	9
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	3
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	4
Crimes Amendment (Police Pursuits) Bill 2010	2
Crimes Amendment (Terrorism) Bill 2010	11
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	10
Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Bill 2010	13
Duties Amendment (NSW Home Builders Bonus) Bill 2010	10
Election Funding and Disclosures Amendment Bill 2010	15
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010	8
Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010	15
Electronic Transactions Amendment Bill 2010	10
Environmental Planning and Assessment Amendment (Development Consents) Bill 2010	5
Evidence Amendment Bill 2010	11
Fair Trading Amendment (Unfair Contract Terms) Bill 2010	9
Firearms Legislation Amendment Bill 2010*	8
Game and Feral Animal Control Repeal Bill 2010*	10
Gas Supply Amendment Bill 2009	1
Health Legislation Amendment Bill 2010	8
Health Legislation Further Amendment Bill 2010	14
Health Services Amendment (Local Health Networks) Bill 2010	14
Home Building Amendment (Warranties and Insurance) Bill 2010	10
Housing Amendment (Community Housing Providers) Bill 2009	1
Industrial Relations Advisory Council Bill 2010	12
Industrial Relations Amendment (Public Sector Appeals) Bill 2010	9
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Bill 2009	1
Jury Amendment Bill 2010	8
Law Enforcement and National Security (Assumed Identities) Bill 2010	10
Macedonian Orthodox Church Property Trust Bill 2010*	9
Marine Parks Amendment (Moratorium) Bill 2010*	8

	Digest Number
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	5
Motor Accidents Compensation Amendment Bill 2010	13
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010	2
National Park Estate (Riverina Red Gum Reservations) Bill 2010	5
National Parks and Wildlife Amendment Bill 2010	2
National Parks and Wildlife Amendment (Adjustment of Areas) Bill 2010	12
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010	8
Nature Conservation Trust Amendment Bill 2010	14
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	5
Occupational Licensing (Adoption of National Law) Bill 2010	14
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	10
Paediatric Patient Oversight (Vanessa's Law) Bill 2010*	5
Parliamentary Budget Officer Bill 2010	14
Parliamentary Contributory Superannuation Amendment Bill 2010	10
Parliamentary Electorates and Elections Amendment Bill 2010	4
Personal Property Securities Legislation Amendment Bill 2010	10
Plant Diseases Amendment Bill 2010	10
Plantations and Reafforestation Amendment Bill 2010	11
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010	9
Police Regulation (Superannuation) Amendment Bill 2010	15
Privacy and Government Information Legislation Amendment Bill 2010	10
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	13
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010	13
Radiation Control Amendment Bill 2010	15
Registrar-General Legislation (Amendment and Repeal) Bill 2010	4
Relationships Register Bill 2010	5
Residential Tenancies Bill 2010	8
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010	4
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010	13
State Emergency Service Amendment (Volunteer Consultative Council) Bill 2010	5
State Revenue Legislation Amendment Bill 2010	9
State Senate Bill 2010	2

	Digest Number
Statute Law (Miscellaneous Provisions) Bill 2010	9
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	10
Superannuation Legislation Amendment Bill 2010	9
Surrogacy Bill 2010	14
Sydney Olympic Park Authority Amendment Bill 2009	1
Terrorism (Police Powers) Amendment Bill 2010	10
Totalizator Amendment Bill 2010	15
Trees (Dispute Between Neighbours) Amendment Bill 2010	5
University of Technology (Kuring-gai Campus) Bill 2010*	14
Veterinary Practice Amendment Bill 2010	13
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	3
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)	4
Weapons and Firearms Legislation Amendment Bill 2010	4
Workers Compensation Amendment (Commission Members) Bill 2010	2
Workers Compensation Legislation Amendment Bill 2010	10

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
APEC Meeting (Police Powers) Bill 2007	Minister for Police	03/07/07		1			
Casino Control Amendment Bill 2010	Minister for Gaming and Racing and Attorney General	08/03/10	18/03/10				2, 5
Civil Liability Legislation Amendment Bill 2008	Attorney General	28/10/08			12		
Contaminated Land Management Amendment Bill 2008	Minister for Climate Change and the Environment	22/09/08	03/12/08		10	1	
Court Suppression and Non-publication Orders Bill 2010	Attorney General	08/11/2010					
Credit (Commonwealth Powers)	Minister for Fair Trading	08/03/10					2
Crimes (Administration of Sentences) Amendment Bill 2008	Attorney General and Minister for Justice	2/12/07			15		
Crimes (Administration of Sentences) Amendment Bill 2009	Minister for Corrective Services	08/08/09				10	
Crimes (Forensic Procedures) Amendment Bill 2008	Minister for Police	24/06/08	06/02/09		9		
Criminal Procedure Amendment (Vulnerable Persons) Bill 2007	Minister for Police	29/06/07		1		2	
Drug and Alcohol Treatment Bill 2007	Minister for Health	03/07/07	28/01/08	1	1		
Environmental Planning and Assessment Amendment Bill 2008; Building Professionals Amendment Bill 2008	Minister for Planning		12/06/08		8		
Guardianship Amendment Bill 2007	Minister for Ageing, Minister for Disability Services	29/06/07	15/11/07	1,7			
Home Building Amendment	Minister for Fair Trading		30/10/08		10, 13		
Liquor Legislation Amendment Bill 2008	Minister for Gaming and Racing	24/11/08	05/01/09		14	2	
Mental Health Bill 2007	Minister Assisting the Minister for Health (Mental Health)	03/07/07		1		2	

Bill	Minister/Member	Letter sent	Reply received	Digest 2007	Digest 2008	Digest 2009	Digest 2010
Parking Space Levy Bill 2009	Minister for Transport	23/03/09	26/05/09			3, 8	
Statute Law (Miscellaneous) Provisions Bill 2007	Premier	29/06/07	22/08/07	1,2			
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2007	Minister for Police	03/07/07		1			
Water Management Amendment Bill 2008	Minister for Water	28/10/08	15/12/08		12	2	

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2010

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Australian Jockey and Sydney Turf Clubs Merger Bill 2010				N	
Building and Construction Long Service Payments Amendment Bill 2009				N	
Casino Control Amendment Bill 2010	N, R, C		N, R		
Central Coast Water Corporation Amendment Bill 2010				N	
Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010	N			N	
Children and Young Persons (Care and Protection) Amendment (Homelessness Reporting Age) Bill 2010*	N, R				
Children and Young Persons (Care and Protection) Amendment (Parental Responsibility) Bill 2010*	N				
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2010	N, R				
Coal Mine Health and Safety Amendment Bill 2010	N, R			N, R	
Coastal Protection and Other Legislation Amendment Bill 2010	N, R	N, R		N	
Coastal Protection and Other Legislation Amendment Bill 2010 (No 2)	N, R	N, R		N	
Community Justice Centres Amendment Bill 2010	N				
Court Information Bill 2010	N, R			N	
Court Suppression and Non-publication Orders Bill 2010	C			N	
Courts Legislation Amendment Bill 2010	N, R				
Credit (Commonwealth Powers) Bill 2010	N, R, C			N, R, C	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010	N, R		N, R	N	
Crimes Amendment (Child Pornography and Abuse Material) Bill 2010	N			N	
Crimes Amendment (Grievous Bodily Harm) Bill 2010*	N, R				
Crimes Amendment (Police Pursuits) Bill 2010	N, R				
Crimes Amendment (Terrorism) Bill 2010	N				
Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010	N, R				
Election Funding and Disclosures Amendment Bill 2010	N, R				
Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010				N	
Electricity Supply Amendment (Solar Bonus Scheme) Bill 2010	N, R				
Electronic Transactions Amendment Bill 2010				N	
Environment Planning and Assessment Amendment (Development Consents) Bill 2010			N, R		
Evidence Amendment Bill 2010				N	
Fair Trading Amendment (Unfair Contract Terms) Bill 2010				N	
Game and Feral Animal Control Repeal Bill 2010	N, R				
Gas Supply Amendment Bill 2009				N	
Health Legislation Amendment Bill 2010	N, R			N, R	
Health Legislation Further Amendment Bill 2010				N	
Health Services Amendment (Local Health Networks) Bill 2010		N		N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Home Building Amendment (Warranties and Insurance) Bill 2010	N				
Housing Amendment (Community Housing Providers) Bill 2009	N				
James Hardie Former Subsidiaries (Winding Up and Administration) Amendment 2009				N	
Jury Amendment Bill 2010	N, R			N	
Macedonian Orthodox Church Property Trust Bill 2010*				N	
Mining and Petroleum Legislation Amendment (Land Access) Bill 2010	N, R				
National Gas (New South Wales) Amendment (Short Term Trading Market) Bill 2010				N	N
National Parks and Wildlife Amendment Bill 2010	N, R			N, R	
National Parks and Wildlife Amendment (Visitors and Tourists) Bill 2010				N	
NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010	N, R			N	
Occupational Licensing (Adoption of National Law) Bill 2010				N	
Ombudsman Amendment (Removal of Legal Professional Privilege) Bill 2010*	N				
Parliamentary Contributory Superannuation Amendment Bill 2010	N				
Personal Property Securities Legislation Amendment Bill 2010				N	
Plantation and Reafforestation Amendment Bill 2010	N, R			N	
Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010				N	
Police Regulation (Superannuation) Amendment Bill 2010	N, R				
Privacy and Government Information Legislation Amendment Bill 2010				N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010	N, R			N	
Protection of the Environment Operations Amendment (Environmental Monitoring) Bill 2010				N	
Relationships Register Bill 2010	N			N	
Residential Tenancies Bill 2010	N, R			N, R	
Road Transport Legislation Amendment (Unauthorised Vehicle Use) Bill 2010				N, R	
Road Transport (Vehicle Registration) Amendment (Written-off Vehicles) Bill 2010				N	
Statute Law (Miscellaneous Provisions) Bill 2010	N				
Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010	N, R				
Superannuation Legislation Amendment Bill 2010				N	
Surrogacy Bill 2010				N	
Sydney Olympic Park Authority Amendment Bill 2009	N, R			N	
Terrorism (Police Powers) Amendment Bill 2010				N	
Totalizator Amendment Bill 2010				N	
University of Technology (Kuring-gai Campus) Bill 2010	N				
Veterinary Practice Amendment Bill 2010	N, R				
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010	N			N	
Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)				N	
Weapons and Firearms Legislation Amendment Bill 2010	N, R			N	

	(i) Trespasses on rights	(ii) Insufficiently defined powers	(iii) Non reviewable decisions	(iv) Delegates powers	(v) Parliamentary scrutiny
Workers Compensation Legislation Amendment Bill 2010				N	

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

Appendix 4: Index of correspondence on regulations

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2008	Digest 2009	Digest 2010
Companion Animals Regulation 2008	Minister for Local Government	28/10/08		12		
Criminal Procedure Amendment (Local Court Process Reforms) Regulation 2010	Attorney General	23/02/10	28/04/10			1, 5
Fisheries Management Legislation Amendment (Fishing Closures) Regulation 2009	Minister for Primary Industries	23/11/09	11/01/10		16	1
Liquor Regulation 2008	Minister for Gaming and Racing and Minister for Sport and Recreation	22/09/08	5/01/09	10	2	
Retirement Villages Regulation 2009	Minister for Fair Trading	22/02/10				1, 8
Tow Truck Industry Regulation 2008	Minister for Roads	22/09/08		10		