

PARLIAMENT OF NEW SOUTH WALES



Legislation Review Committee

LEGISLATION REVIEW DIGEST

No 15 of 2006

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TABLE OF CONTENTS

Membership & Staff.....	ii
Functions of the Legislation Review Committee.....	iii
Guide to the <i>Legislation Review Digest</i>	iv
Summary of Conclusions	vi
 Part One – Bills.....	 1
SECTION A: Comment on Bills.....	1
1. Adoption Amendment Bill 2006.....	1
2. Charter of Budget Honesty (Election Promises Costing) Bill 2006.....	3
3. Crimes (Administration of Sentences) Amendment Bill 2006.....	4
4. Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006	6
5. Crown Lands Legislation Amendment (Carbon Sequestration) Bill.....	12
6. Election Funding Amendment Bill 2006	14
7. Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006.....	16
8. Passenger Transport Amendment Bill 2006	19
9. Ports Corporatisation and Waterways Management Amendment Bill 2006	20
10. National Park Estate (Lower Hunter Region Reservations) Bill 2006	22
11. Police Amendment (Miscellaneous) Bill 2006	24
12. Quarantine Station Preservation Trust Bill 2006*	26
13. Racing Legislation Amendment Bill 2006	28
14. State Revenue Legislation Amendment (Tax Concessions) Bill 2006	29
15. Western Sydney Parklands Bill 2006	30
SECTION B: Ministerial Correspondence — Bills Previously Considered.....	31
16. Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 and Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006.....	31
 Part Two – Regulations	 47
SECTION A: Regulations about which the Committee is Seeking Further Information.....	47
Appendix 1: Index of Bills Reported on in 2006.....	48
Appendix 2: Index of Ministerial Correspondence on Bills	52
Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006.....	54
Appendix 4: Index of correspondence on regulations reported on in 2006.....	57
 * Denotes Private Member's Bill	

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FUNCTIONS OF THE LEGISLATION REVIEW COMMITTEE

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

8A Functions with respect to Bills

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

9 Functions with respect to Regulations:

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

GUIDE TO THE *LEGISLATION REVIEW DIGEST*

Part One – Bills

Section A: Comment on Bills

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

Section B: Ministerial correspondence – Bills previously considered

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

Part Two – Regulations

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

Regulations for the special attention of Parliament

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

Regulations about which the Committee is seeking further information

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

Copies of Correspondence on Regulations

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

Appendix 1: Index of Bills Reported on in 2005

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

Appendix 2: Index of Ministerial Correspondence on Bills for 2005

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

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

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

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

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

SUMMARY OF CONCLUSIONS

SECTION A: Comment on Bills

1. Adoption Amendment Bill 2006

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

2. Charter of Budget Honesty (Election Promises Costing) Bill 2006

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

3. Crimes (Administration of Sentences) Amendment Bill 2006

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

4. Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006

Proposed s 292(2) – Publication of evidence

20. The Committee notes that, on its face, s 292(6) may appear to be inconsistent with a Court's traditional procedural impartiality.
21. However, the Committee also notes that the Bill constitutes a legislative step taken by Parliament to redress the traditional inadequacies in the treatment of complainants in sexual offence cases.
22. Having regard to this broader context of the Bill, the Committee does not consider that proposed s 292(6) unduly trespasses on the personal rights and liberties of an accused person.

Proposed s 294(3) – (5): *Longman* directions

29. The Committee notes that the Bill arguably trespasses upon the rights of an accused in limiting the availability of a *Longman* direction.
30. However, the Committee also notes that the changes ought to be viewed in the light of an ongoing process of criminal law reform designed to improve the legal system's handling of sexual assault prosecutions.
31. Having regards to the objects of the Bill, the safeguards therein, the problematic nature of *Longman* directions, and the need to take account of the concerns of the complainant and the interests of the community, the Committee does not consider that proposed s 294(3) – (5) unduly trespass upon the rights of an accused person.

Proposed Chapter 6, Part 5, Division 4: Retrospectivity

34. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.
35. The Bill's application to re-trials ordered before its commencement impinges upon a defendant's legitimate expectation that the retrial will be conducted in accordance with current law and that they will therefore be able to re-examine the complainant at the new trial.
36. Having regard to the benefit to the complainant of not being compelled to testify a second time, the benefit to the community of ensuring that persons accused of sexual offences are effectively dealt with by the criminal justice system, and the continuing common law requirement of a fair trial, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties.

5. Crown Lands Legislation Amendment (Carbon Sequestration) Bill

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

6. Election Funding Amendment Bill 2006

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

7. Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006**Termination of operation of provision: Proposed Clause 97KB**

8. The Committee notes that the bill provides that the Governor may, by proclamation published in the Gazette, terminate the operation of Part 8A of the Act.
9. However, the Committee also notes that, consistent with the objects of the bill, the Governor may only terminate the operation of Part 8A where the Minister certifies that New South Wales is, or will be, a participant in a scheme (either nationally, or with at least one other State or Territory) that is designed to reduce greenhouse gas emissions associated with the production and use of electricity.
10. The Committee refers to Parliament the question of whether allowing the Governor to terminate the operation of Part 8A under such conditions by proclamation, is an inappropriate delegation of legislative powers.

8. Passenger Transport Amendment Bill 2006

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

9. Ports Corporatisation and Waterways Management Amendment Bill 2006

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| 6. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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10. National Park Estate (Lower Hunter Region Reservations) Bill 2006

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| 3. | The Committee did not identify any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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11. Police Amendment (Miscellaneous) Bill 2006

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| 10. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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12. Quarantine Station Preservation Trust Bill 2006*

Insufficiently defined administrative powers [s 8A(1)(b)(ii) *LRA*]: Clauses 10 & 11

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| 10. | Clause 11(3) may create uncertainty regarding whether any lease or licence the Minister purports to issue under the Bill is valid. The Committee refers to Parliament the question of whether this makes the rights of a lessee or licensee under the Bill unduly dependent upon insufficiently defined administrative powers. |
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13. Racing Legislation Amendment Bill 2006

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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14. State Revenue Legislation Amendment (Tax Concessions) Bill 2006

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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15. Western Sydney Parklands Bill 2006

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| 3. | The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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SECTION B: Ministerial Correspondence — Bills Previously Considered

16. Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 and Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006

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| 6. | The Committee thanks the Premier for his response. |
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Part One – Bills

SECTION A: COMMENT ON BILLS

1. ADOPTION AMENDMENT BILL 2006

Date Introduced:	17 October 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Reba Meagher MP
Portfolio:	Community Services and Youth

Purpose and Description

1. This Bill amends the *Adoption Act 2000*:
 - (a) to clarify the circumstances that must exist before the Supreme Court makes an adoption order in relation to an adult;
 - (b) to require adoption plans for Aboriginal and Torres Strait Islander children to make provision for certain matters;
 - (c) to specify the circumstances that must exist before an adoption order may be made to enable a child to be adopted by his or her authorised carers;
 - (d) to facilitate the return of children to the parental responsibility of the Director-General of the Department of Community Services;
 - (e) to ensure that the provision of certain documents to adopted children does not contravene the provisions of the *State Records Act 1998*;
 - (f) to provide for the issue of search warrants to facilitate the investigation of suspected offences under the *Adoption Act 2000* and the regulations under that Act;
 - (g) to enable the prescription of adoption services and accreditation standards to be effected by administrative order not regulation;
 - (h) to enact savings and transitional provisions; and
 - (i) to align certain terminology used in that Act with terminology used in the *Children and Young Persons (Care and Protection) Act 1998*.

Background

2. In her second reading speech, the Minister stated:

The Bill seeks to enhance the functioning of the adoption legislation following extensive consultation held with the sector before the introduction of the *Adoption Regulation 2003*. These amendments are seen as operational amendments that do not alter matters of significant policy. The amendments are being made independently of the statutory review of the Act.¹

¹ The Hon Reba Meagher MP, Minister for Community Services and Youth, Legislative Assembly *Hansard*, 17 October 2006.

Bill

3. Among other things, the Bill provides for an additional ground on which the Supreme Court may dispense with the consent of the parent or parents of a child who is the subject of an application for adoption (Schedule 1[6]). Currently, the Act allows the Supreme Court to grant an application for adoption of a child in circumstances without the consent of a person other than the child, such as the child's parents. The circumstances include where the person concerned cannot be found or identified or if the person is a parent or guardian of the child and there is serious cause for concern for the welfare of the child and it is in the best interests of the child to override the wishes of the parent or guardian.
4. The Bill adds another circumstance in which the court can dispense with the consent of a person other than the child, namely if an application for adoption of a child has been made by the authorised carers for the child, the child has established a stable relationship with those carers and the adoption of the child by those carers will promote the child's welfare.
5. In her second reading speech, the Minister stated that the Supreme Court had asked for this amendment. The Minister's Office advised the Committee that the amendment is required in those cases where a child has been placed with prospective adoptive parents or has been living with Department of Community Services' authorised carers for some time and the Department thinks that the child's needs will best be met by the making of an adoption order.
6. The Minister's Office further advised that, under the *Children and Young Persons (Care and Protection) Act 1998*, a decision to proceed to adoption on this basis is made only after a detailed assessment of the child's situation, his or her bond with the carers and his or her psychological needs for stability. The child's history, age at placement and length of time with present carers are all relevant considerations. In addition, such a decision is made only if prospect of restoration to the birth family has been excluded and if the carers are able to provide the child with long-term family membership through adoption.
7. Where the Supreme Court is asked to dispense with the consent, the parents will be served notice of a potential adoption and can be joined as a party to proceedings to put their views forward, if they do not consent to the adoption.

Issues Considered by the Committee

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

2. CHARTER OF BUDGET HONESTY (ELECTION PROMISES COSTING) BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Michael Costa MLC
Portfolio: Treasurer

Purpose and Description

1. The object of this Bill is to enable the Government and the Opposition to obtain and release independent assessments by the Treasury of the cost of election promises before a State general election.

Background

2. The following background was provided in the second reading speech:

The bill ensures that the New South Wales Treasury will be made available to cost the election promises made by both the Government and the Opposition. Those costings will include a four-year forward projection encompassing both capital and recurrent commitments.

The provisions of this bill are largely similar to those contained in the Commonwealth Charter of Budget Honesty Act introduced by the Howard Government in 1998. However, it differs in two important respects. First, it allows the Leader of the Opposition to have access to the Treasury to cost a proposed policy prior to its announcement. This allows the Opposition to assess the financial impacts of a proposed policy and provides the opportunity to delete that policy or amend it prior to release. Secondly, it provides a mechanism to assess the overall financial impact of the policies presented by each of the major parties.²

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

² The Hon Morris Iemma MP, Premier, Legislative Assembly *Hansard*, 17 October 2006.

3. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

The Bill passed all stages in the Legislative Assembly on 18 October 2006 and in the Legislative Council on 19 October 2006. Under s 8A(2), the Committee is not precluded from reporting on a Bill because it has passed a House of the Parliament or become an Act.

Purpose and Description

1. The Bill makes a range of amendments to the *Crimes (Administration of Sentences) Act 1999* [the Act] as set out below.
2. The Bill also makes consequential amendments to the *Crimes (Administration of Sentences) Regulation 2001* and to the *Children (Detention Centres) Act 1987*.

Background

3. The following background was provided in the second reading speech:

The object of the Crimes (Administration of Sentences) Amendment Bill 2006 is to make various amendments to the Crimes (Administration of Sentences) Act 1999, which is the principal Act that governs the administration of sentences. The amendments will make a number of miscellaneous changes to the Act and will clarify certain aspects of the operation of the Act. The amendments relate to such things as lifetime supervision of lifetime parolees, transfer of juvenile inmates to prison hospitals, home visits to offenders under periodic detention orders and home detention orders, reinstatement of periodic detention orders that have been revoked, suspension of warrants of commitment, creation of a unit within the department to oversee compliance and monitoring of offenders in the community, and other minor, consequential and ancillary matters.³

The Bill

4. The Bill amends the Act so as to make provision with respect to the following matters:
 - the transfer of juvenile inmates to prison hospitals [proposed new s 41C(5) &(6)];
 - the attendance of inmates at court proceedings [proposed amended s 77(1)];
 - home visits to offenders under periodic detention orders and home detention orders [proposed new s 81(d)];

³ Mr P E McLeay MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 17 October 2006.

- the period for which community service orders remain in force [proposed amended s 110];
- the supervision of parole in relation to offenders serving certain life sentences [proposed new s128B];
- the reinstatement of periodic detention orders that have been revoked [proposed amended s 164A];
- the release of offenders pending assessment for home detention [proposed amended s 165AA];
- the circumstances in which the revocation of a periodic detention order or home detention order can be rescinded [proposed s 175];
- the exclusion of the right of review in relation to the revocation of certain periodic detention orders, home detention orders and parole orders [proposed amended s 175];
- the suspension of warrants of commitment [proposed amended s 181];
- the documents to which an offender's victim may be given access [proposed amended s 193A];
- the supervision of community service work [proposed new s 235F];
- the appointment and functions of Departmental compliance and monitoring officers [proposed new s235G]; and
- the testing of staff for alcohol and prohibited drugs [proposed amended s 236F].

Issues Considered by the Committee

<p>5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>
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The Committee makes no further comment on this Bill.

4. CRIMINAL PROCEDURE AMENDMENT (SEXUAL AND OTHER OFFENCES) BILL 2006

Date Introduced: 18 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus MP
Portfolio: Attorney General

Purpose and Description

1. The Bill amends the *Criminal Procedure Act 1986* to:
 - clarify the circumstances in which complainants may be called to give evidence in committal proceedings for certain sexual offences and to make it clear that child complainants may never be called;
 - provide that witnesses in criminal proceedings who have difficulty communicating are entitled to use a person or a communication aid to assist in giving evidence;
 - make further provision with respect to the non-publication of the names of sexual assault complainants and make provision for the non-publication of evidence in relation to certain sexual assault proceedings;
 - clarify and provide for various jury directions given in certain sexual offence proceedings in relation to complainants;
 - give lawyers who are appointed in certain sexual offence proceedings to ask questions of a complainant on behalf of an accused person immunity from liability;
 - permit the admission of a record of evidence given by a complainant in certain sexual offence proceedings in any new trial that is listed following a trial that has been discontinued.

Background

2. The following background was provided in the second reading speech:

The bill is part of the Government's ongoing legal reforms in the area of sexual assault prosecution, and arises out of the recommendations of the Criminal Justice Sexual Offences Task Force, which was established in December 2004. The task force report, published in April 2006, contains 70 recommendations and represents the most comprehensive review of the law in this area in the past 20 years. The task force was made up of representatives from a number of Government and non-government agencies and involved wide consultation with various stakeholders...

The task force recommendations not only highlight the need to change laws and procedures affecting the prosecution of sexual assault matters, but are aimed at bringing about a cultural shift in the way sexual offences are investigated and prosecuted and the attitudes of key participants within the criminal justice system. It is hoped that addressing these issues will help alleviate the high rates of attrition in sexual offences. The bill concentrates on the legislative recommendations in the task

force report, and is part of the Government's commitment to improving the response of the criminal justice system to sexual assault crimes, while at the same time upholding the cornerstone legal principles that are valued by our community, such as the right of the accused to a fair trial.⁴

The Bill

Committal proceedings

3. The Act currently provides that a person who made a written statement tendered as evidence in committal proceedings may be directed by a Magistrate to attend at the proceedings [s 91].
4. The Bill provides that the statement of a witness directed to attend to give evidence in committal proceedings may be admissible in the proceedings as evidence if:
 - the accused person and prosecutor consent; and
 - the Magistrate is satisfied there are substantial reasons why, in the interests of justice, the statement should be admitted [proposed amended s 91(4)].
5. In any committal proceedings in which the accused person is charged with an offence involving violence, the Magistrate may not - under s 91 - direct the attendance of an alleged victim of the offence who made a written statement, unless the Magistrate is of the opinion that there are special reasons why the alleged victim should, in the interests of justice, attend to give oral evidence. The Bill makes it clear that such a direction should *not* be given, even if the parties consent to the attendance [proposed amended s 93(1)].
6. The Bill also clarifies that a child complainant in proceedings for certain child sexual assault offences can never be directed to attend the relevant committal proceedings [proposed amended s 93].

Evidence of witnesses with communication difficulties

7. The Bill provides that in any criminal proceedings a witness who has difficulty communicating is entitled to use a person or a communication aid to assist the witness with giving evidence, but only if the witness ordinarily uses such a person or communication aid on a daily basis [proposed new s 275B].⁵

Non-publication orders

8. A court may make an order forbidding publication of evidence, or any report or account of that evidence, in certain sexual offence proceedings [s 292]. The Bill provides that the publication of evidence or any report or account of that evidence *includes* the broadcast of evidence or any report or account of that evidence by radio or television or the dissemination of evidence by any other electronic means such as the internet [proposed new s 292(5)].

⁴ Hon G A McBride MP, Minister for Gaming and Racing, Legislative Assembly *Hansard*, 18 October 2006.

⁵ The provisions of the *Evidence Act 1995* in relation to interpreters will apply to persons who give such witnesses assistance in giving evidence.

9. The Bill also provides that the court must consult with the complainant in such proceedings when determining whether to make an order for non-publication and that an order may continue to have effect after the proceedings have been finally disposed of [proposed new s 292(6) & (7)].
10. Similarly, s 578A of the *Crimes Act 1900* provides that it is an offence to publish any matter which identifies the complainant in certain sexual offence proceedings or any matter which is likely to lead to the identification of the complainant. The Bill amends s 578A to provide that publishing also includes the dissemination of any matter by any other electronic means such as the internet.

Jury directions

11. The Act currently provides that in certain sexual offence proceedings where evidence is given or a question is asked of a witness that tends to suggest an absence of a complaint or delay in complaining about the alleged offence, the Judge is to warn the jury that the lack of complaint or delay in complaining by a complainant does not necessarily indicate that the allegation that the offence was committed is false, and that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault [s 294].
12. The Bill further provides that the Judge must not warn the jury that delay in complaining is relevant to a victim's credibility unless there is sufficient evidence to justify such a warning [proposed new s 294(2)(c)]. However, the Bill also provides that if the delay is significant and the Judge is satisfied that the accused person has suffered a significant forensic disadvantage caused by the delay, the Judge may warn the jury - but only if a party to the proceedings so requests - of the nature of the disadvantage, and the need for caution in determining whether to accept or give any weight to the evidence or question suggesting the absence of a complaint or delay in complaining.
13. The Bill also provides that in certain sexual offence proceedings a judge must not warn a jury, or make any suggestion to a jury, that complainants as a class are unreliable witnesses. The proposed section specifically prohibits the giving of a warning to a jury of the danger of convicting on the uncorroborated evidence of a complainant [proposed new s 294AA].

Lawyers appointed to examine complainant for accused person

14. Currently, an unrepresented accused person may not examine a complainant in certain sexual offence proceedings; such examination may only be carried out by a person appointed by the court [s 294A]. The Bill provides that a lawyer who is appointed under s 294A is immune from any action, liability, claim or demand when acting in the course of the appointment [proposed new s 294A(9)].

Subsequent trials of sexual offence proceedings

15. The Bill provides for the admission of a record of evidence given by a complainant in a sexual offence proceeding in any new trial that is listed following a trial that has been discontinued [proposed new Div 4 Part 5 Ch 6].⁶
16. The prosecutor may tender as evidence in the new trial proceedings a record of the evidence of the complainant given in the discontinued proceedings [proposed new s 306I]. This will include the evidence given by the complainant on examination in chief, and any further evidence given on cross-examination or re-examination.
17. The record will be admissible only if the prosecutor gives the court and the accused person notice of the prosecutor's intention to tender the record [proposed s 316I(3)]. The hearsay rule under the *Evidence Act 1995* will not prevent the admission or use of the record as evidence [proposed s 306I(4)].⁷
18. If a record of the evidence of a complainant is admitted in the new trial proceedings, the complainant will not be compellable to provide any further evidence, unless the court hearing the new trial proceedings is satisfied of various matters [proposed new s 306J]. However, the complainant may elect to give further oral evidence (with leave of the court) if the complainant so chooses [proposed s 306K].

Issues Considered by the Committee

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

Proposed s 292(2) – Publication of evidence

19. The Bill requires a judge, before making an order forbidding publication of evidence in sexual offence proceedings, to seek and consider any views of the complainant [proposed s 292(6)]. To the extent that it may give the impression that greater weight is attached to the views of the complainant than those of the accused, this arrangement may be regarded as inconsistent with the impartiality associated with due process and the fair administration of criminal justice.

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| <ol style="list-style-type: none"> 20. 21. 22. | <p>The Committee notes that, on its face, s 292(6) may appear to be inconsistent with a Court's traditional procedural impartiality.</p> <p>However, the Committee also notes that the Bill constitutes a legislative step taken by Parliament to redress the traditional inadequacies in the treatment of complainants in sexual offence cases.</p> <p>Having regard to this broader context of the Bill, the Committee does not consider that proposed s 292(6) unduly trespasses on the personal rights and liberties of an accused person.</p> |
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⁶ Proposed s 306H contains definitions for the purposes of the proposed Division.

⁷ The provisions of the proposed Division extend to new trials listed before the commencement of the Division.

Proposed s 294(3) – (5): *Longman* directions

23. The Bill addresses the circumstances in which trial judges should issue a “*Longman* direction”: ie, a warning as to the danger of convicting on the complainant’s evidence alone, in cases where a significant period of time has elapsed between the alleged commission of the offence and the complaint [proposed new s 294(3)-(5)].⁸
24. The primary criteria for issuing such a warning are that the delay is *significant* [s 294(3)(a)], and that the judge is satisfied that the defendant has *suffered a significant forensic disadvantage* as a result of the delay [s 294(3)(b)].
25. The Bill contains a non-exhaustive list of the factors which may be regarded as establishing a “significant forensic disadvantage”, namely:
- death or unlocatability of potential witnesses [s 294(4)(a)]; and
 - lost or unavailable potential evidence [s 294(4)(b)].
26. The Bill emphasises that the “mere passage of time” does not represent a significant forensic disadvantage [proposed new s 294(5)].
27. To the extent that the intended effect of proposed s 294(3)-(5) is to reduce the number of cases in which a *Longman* direction will be given, it might be argued that the Bill potentially trespasses on the personal rights and liberties of defendants in sexual offence trial – in that a dimension of their right to a fair trial will be modified. Put simply, a case which may currently attract a *Longman* warning, *may* not attract such a warning under the rules established by proposed s 294(3)-(5).
28. However, the Committee notes that:
- the changes form part of a broader and well-established law reform program designed to improve the legal system’s handling of sexual assault prosecutions – taking into account not only the rights of the accused, but also the concerns of the complainant, and the interests of the wider community;
 - the complexity and difficulty posed by the current operation of the rules governing *Longman* directions, and the desirability of reform, have been widely recognised;⁹ and
 - under the terms of the Bill trial judges will retain considerable discretion in relation to the making of delay-based warnings.

- 29. The Committee notes that the Bill arguably trespasses upon the rights of an accused in limiting the availability of a *Longman* direction.**
- 30. However, the Committee also notes that the changes ought to be viewed in the light of an ongoing process of criminal law reform designed to improve the legal system’s handling of sexual assault prosecutions.**

⁸ *R v Longman* (1989) 168 CLR 79.

⁹ Most recently, see Tasmania Law Reform Institute, *Warnings in sexual offences cases relating to delay in complaint*, Final Report No 8, October 2006; and *DRE v R* [2006] NSWCCA 280, paragraphs 57– 60 per Simpson J.

- 31. Having regards to the objects of the Bill, the safeguards therein, the problematic nature of *Longman* directions, and the need to take account of the concerns of the complainant and the interests of the community, the Committee does not consider that proposed s 294(3) – (5) unduly trespass upon the rights of an accused person.**

Proposed Chapter 6, Part 5, Division 4: Retrospectivity

32. The Bill amends the Act to extend the complainant's evidence "carry over" arrangements introduced by the *Criminal Procedure Amendment (Evidence) Act 2005* in relation to retrials after appeal, and to retrials after the original trial is discontinued. To this extent it operates retrospectively.
33. The Committee reported on the *Criminal Procedure Amendment (Evidence) Act 2005* in its *Digest* No 3 of 2006, and considers that its conclusions in respect of that Act on the issues of legitimate expectations of an accused, and the right to a fair trial, are equally applicable to the Bill.

- 34. The Committee will always be concerned to identify where legislation has a retrospective effect that may impact adversely upon any person.**
- 35. The Bill's application to re-trials ordered before its commencement impinges upon a defendant's legitimate expectation that the retrial will be conducted in accordance with current law and that they will therefore be able to re-examine the complainant at the new trial.**
- 36. Having regard to the benefit to the complainant of not being compelled to testify a second time, the benefit to the community of ensuring that persons accused of sexual offences are effectively dealt with by the criminal justice system, and the continuing common law requirement of a fair trial, the Committee does not consider that the Bill trespasses unduly on personal rights and liberties.**

The Committee makes no further comment on this Bill.

5. CROWN LANDS LEGISLATION AMENDMENT (CARBON SEQUESTRATION) BILL

Date Introduced: 18 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Tony Kelly MLC
Portfolio: Lands

Purpose and Description

1. Carbon sequestration in relation to a tree or forest is defined in section 87A of the *Conveyancing Act 1919* as the process by which the tree or forest absorbs carbon dioxide from the atmosphere. A carbon sequestration right in relation to land confers a right to the legal, commercial or other benefit of carbon sequestration by any existing or future tree on the land. Carbon sequestration rights are created in accordance with the provisions of Division 4 of Part 6 of the *Conveyancing Act 1919* (which also provides for the imposition of covenants and restrictions on use in connection with the creation of such rights) and are usually associated with the creation of forestry rights that relate to the establishment and maintenance of trees on the land.
2. The objects of this Bill are as follows:
 - (a) to amend the *Crown Lands Act 1989* to expressly authorise the Minister administering that Act to grant carbon sequestration and related forestry rights in respect of Crown land,
 - (b) to amend the *Western Lands Act 1901* to expressly authorise the Minister administering that Act to grant carbon sequestration and related forestry rights in respect of land held under lease under that Act,
 - (c) to authorise a perpetual lessee under either Act to grant, with the relevant Minister's consent, carbon sequestration and related forestry rights in respect of the land that is subject to the perpetual lease,
 - (d) to ensure that the Minister administering the *Forestry Act 1916* is consulted before carbon sequestration and related forestry rights are granted under the *Crown Lands Act 1989* or the *Western Lands Act 1901* in respect of Crown-timber land,
 - (e) to amend the *Forestry Act 1916* to make it clear that the Forestry Commission may grant forestry rights for its own benefit in respect of State forests, timber reserves and land owned by it,
 - (f) to make other amendments of a minor or consequential nature.

Background

3. The following background is provided in the second reading speech:

The Western Division and other Crown land comprises roughly half of New South Wales. The bill has been prepared to remove legal impediments to using that land for

the purposes of carbon sequestration under GGAS [Greenhouse Gas Abatement Scheme].

...

Carbon sequestration is that process whereby vegetation incorporates carbon through the process of photosynthesis, converting carbon dioxide and water to starch and oxygen, with the carbon effectively stored in the structure of the tree. The long-term storage of carbon through this process is the basis for carbon sequestration activities to ameliorate greenhouse gas emissions.¹⁰

Issues Considered by the Committee

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| <p>4. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

¹⁰ The Hon Grant McBride, Minister for Gaming and Racing, and Minister for the Central Coast, Legislative Assembly *Hansard*, 18 October 2006.

6. ELECTION FUNDING AMENDMENT BILL 2006

Date Introduced:	17 October 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon Morris Iemma MP
Portfolio:	Premier

Purpose and Description

1. The object of this Bill is to amend the *Election Funding Act 1981* in relation to:
 - (a) payments of election campaign expenditure funding from the Constituency Fund established under that Act to certain Legislative Assembly candidates for election, and
 - (b) increasing the powers of the Election Funding Authority to enable it to investigate certain failures to disclose electoral expenditure as required by that Act.

Background

2. The following background was provided in the second reading speech:

The Election Funding Act imposes obligations on parties, candidates, individuals and organisations to disclose political donations and campaign expenditure...

The Act also provides for the public funding of part of the costs of candidates and political parties during election campaigns... The Act is administered by the Election Funding Authority, which is chaired by the Electoral Commissioner. The Electoral Commissioner has, on behalf of the authority, drawn to the Government's attention the need for two amendments to the Act.

The first amendment relates to the provisions in the Act that require the disclosure of political donations and electoral expenditure incurred in connection with an election. The Electoral Commissioner has highlighted a recent case that shows that the important disclosure provisions of the Act could be undermined. The problem arises because the authority has no power to require a person to provide information to the authority about the identity of another person or organisation that might have failed to disclose a political donation or electoral expenditure.

The second amendment affects the provisions of the Act that provide for public funding of election campaigns. Candidates are entitled to make claims for reimbursement of electoral expenditure from the Constituency Fund. Parties, on the other hand, are entitled to make claims on the Central Fund for expenditure they incur. In the past, candidates have been able to claim from the Constituency Fund amounts that have been invoiced to them by political parties, in circumstances where the party incurs expenditure on behalf of the candidate.

As honourable members would be aware, political parties often arrange advertising and incur other expenditure on behalf of the candidates they endorse. Formal agency arrangements are generally not in place between candidates and political parties. However, in most cases there are informal understandings or arrangements that the party will incur certain expenditure for the benefit of the candidates, such as printing or advertising costs. When parties incur expenditure on behalf of candidates without a

formal agency arrangement being in place, without these amendments they would only be able to claim that expenditure from the Central Fund. It is appropriate that parties are able to invoice candidates for those amounts, and for the candidates to claim the amounts from the Constituency Fund.¹¹

The Bill

3. Schedule 1 [1] inserts proposed section 74 (6) and (7) into the *Election Funding Act 1981* to make it clear that an endorsed candidate of a registered political party at a Legislative Assembly election may claim as electoral expenditure amounts incurred by the political party for the benefit of the candidate, or for the benefit of the candidate and other candidates endorsed by the party, at the election (such as advertising or printing costs) and invoiced by that party to the candidate for payment.
4. Schedule 1 [2] inserts proposed section 110A into the *Election Funding Act 1981* to provide that if the Election Funding Authority, or an authorised member of staff of the Election Funding Authority, reasonably suspects that a person has failed to lodge a declaration relating to electoral expenditure as required by section 85A of that Act, the Authority, or the authorised staff member, may require any other person whom the Authority, or the authorised staff member, reasonably suspects may have information regarding that electoral expenditure to give certain information and produce documents in relation to that failed disclosure or the electoral expenditure. It will be an offence, carrying a maximum penalty of 100 penalty units (currently \$11,000) to fail, without reasonable excuse, to comply with such a requirement.

Issues Considered by the Committee

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| 5. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

¹¹ Mr Paul McLeay, Parliamentary Secretary, Legislative Assembly *Hansard*, 17 October 2006.

7. ELECTRICITY SUPPLY AMENDMENT (GREENHOUSE GAS ABATEMENT SCHEME) BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Joe Tripodi MP
Portfolio: Energy

Purpose and Description

1. Part 8A of the *Electricity Supply Act 1995* (the Principal Act) establishes a scheme that provides for the reduction of greenhouse gas emissions associated with the production and use of electricity and encourages participation in activities to offset the production of greenhouse gas emissions:
 - (a) by setting out State greenhouse gas benchmarks and providing for the calculation on the basis of these of individual greenhouse gas benchmarks for certain participants in the electricity industry and large users of electricity, and
 - (b) by providing a scheme for the recognition of activities that reduce or promote the reduction of greenhouse gas emissions and enable trading in, and use of certificates created as a result of those activities for the purpose of meeting greenhouse gas benchmarks, and
 - (c) by imposing penalties for failure to meet greenhouse gas benchmarks in any year.
2. The scheme currently has effect until 31 December 2012 as State greenhouse gas benchmarks that are the basis of the scheme are set until that date.
3. The object of this Bill is to amend the Principal Act:
 - (a) to provide for the extended operation of the scheme from 2012 to 2021 and beyond or until a scheme with similar objects is established on a national basis or in this jurisdiction and at least one or more other States or Territories, and
 - (b) to increase in incremental steps commencing 1 January 2010 the amount of the penalty payable under Part 8A by a benchmark participant who fails to comply with the participant's greenhouse gas benchmark for reduction of greenhouse gas emissions in any year, and
 - (c) to make minor amendments to facilitate the administration of the scheme.

Background

4. The following background is provided in the second reading speech:

In August of this year, Premiers and first Ministers released a discussion paper on a possible design for a national greenhouse gas emissions trading scheme. A national scheme could start as soon as 2010 if State and Territory governments agree to proceed with it. Unless honourable members pass this bill, the New South Wales

Greenhouse Gas Abatement Scheme will end in 2012, leaving business without the certainty it needs to invest now in an environmentally responsible way. Many projects encouraged by the Greenhouse Gas Abatement Scheme require significant capital investment, and investors will only receive a payback over a long period of time. Without a clear signal that carbon trading will continue beyond 2012, investment in environmentally friendly technologies under the Greenhouse Gas Abatement Scheme may dry up.

For this reason, the Government decided to extend the scheme until a national emissions trading scheme is established. The bill extends the scheme without major amendments. This is an interim measure to provide continuity for investors facing the uncertainty that the New South Wales scheme may end before a national emissions trading scheme begins.¹²

Issues Considered by the Committee

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

Termination of operation of provision: Proposed Clause 97KB

5. One of the objects of the bill is to provide for the extended operation of the Greenhouse Gas Abatement Scheme from 2012 to 2021 and beyond or until a scheme with similar objects is established on a national basis or in this jurisdiction and at least one or more other States or Territories.
6. Proposed clause 97KB(1) provides that the Governor may, by proclamation published in the Gazette, terminate the operation of any or all of the provisions of Part 8A.¹³
7. Proposed clause 97KB(2) provides:

A proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied that New South Wales is, or will be, a participant in a scheme that:

 - (a) has been or will be established (either nationally or in this State and at least one or more other States or Territories), and
 - (b) is designed to achieve outcomes that include the reduction of greenhouse gas emissions associated with the production and use of electricity and encouragement of participation in activities to offset the production of greenhouse gas emissions nationally or in the participating jurisdictions.

8. **The Committee notes that the bill provides that the Governor may, by proclamation published in the Gazette, terminate the operation of Part 8A of the Act.**
9. **However, the Committee also notes that, consistent with the objects of the bill, the Governor may only terminate the operation of Part 8A where the Minister certifies that New South Wales is, or will be, a participant in a scheme (either nationally, or with at least one other State or Territory) that is designed to reduce greenhouse gas emissions associated with the production and use of electricity.**

¹² The Hon Joesph Tripodi, Minister for Energy, Legislative Assembly *Hansard*, 17 October 2006.

¹³ Part 8A establishes the Greenhouse Gas Abatement Scheme.

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| <p>10. The Committee refers to Parliament the question of whether allowing the Governor to terminate the operation of Part 8A under such conditions by proclamation, is an inappropriate delegation of legislative powers.</p> |
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The Committee makes no further comment on this Bill.

8. PASSENGER TRANSPORT AMENDMENT BILL 2006

Date Introduced:	18 October 2006
House Introduced:	Legislative Assembly
Minister Responsible:	The Hon John Watkins MP
Portfolio:	Transport

Purpose and Description

1. The object of this Bill is to amend the *Passenger Transport Act 1990* so as to make it clear:
 - (a) that 2 or more individuals may carry on bus or other public passenger services in partnership or under other arrangements, and
 - (b) that any kind of corporate body (including incorporated associations and co-operatives) may carry on bus or other public passenger services.

Background

2. The following background is provided in the second reading speech:

Under the [Passenger Transport Act 1990], provision is only made for an individual or a corporation to be accredited as the operator of a public passenger service.

While “partnerships” and associations have been erroneously accredited since 1990, which was exacerbated by incorrect legal advice some years ago, subsequent legal advice from the Crown Solicitor made it clear that only an individual or a corporation can be accredited.

From the 1st July, 2005, upon amendment of the Passenger Transport (Bus Services) Regulation 2000, the previous arrangement of bus operator accreditation for life was replaced with accreditation for three-year terms. Bus operators were advised that, in the light of the Crown Solicitor’s advice, they may apply for reaccreditation only as an individual or a corporation.

Acknowledging industry concerns, the Ministry of Transport agreed to representations by the Bus and Coach Association that legislative amendments be sought to recognise “partners” and associations who are operating public passenger services, as well as those who may wish do so in the future.¹⁴

Issues Considered by the Committee

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| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

¹⁴ Mr Matt Brown MP, Parliamentary Secretary, Legislative Assembly *Hansard*, 18 October 2006.

9. PORTS CORPORATISATION AND WATERWAYS MANAGEMENT AMENDMENT BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Joe Tripodi MP
Portfolio: Ports and Waterways

Purpose and Description

1. The Bill amends the *Ports Corporatisation and Waterways Management Act 1995* [the Act] to:
 - change the name of the Act to the *Ports and Maritime Administration Act 1995*;
 - provide that the Minister, rather than the Governor, may issue operating licences to Port Corporations;¹⁵
 - expand the statutory delegation powers of the Minister;
 - give the Maritime Authority a statutory power of delegation;
 - set out the principal functions of the Maritime Authority; and
 - confirm the validity of certain instruments issued under non-statutory delegations.
2. The Bill also amends other Acts consequentially.

Background

3. The following background was provided in the second reading speech:

The Ports Corporatisation and Waterways Management Act currently gives the Governor the responsibility for issuing, renewing, and cancelling these licences. The personal involvement of the Governor in administering these licences is an unnecessary formality. To streamline the administration of this process it is proposed that these functions be assigned directly to the Minister for Ports and Waterways. Over the years, the Maritime Authority has undergone considerable transformation and changes to its administrative arrangements...Since 1995 the organisation's role has evolved from a core focus on recreational and commercial boating safety to a broader maritime role encompassing oil and chemical pollution response, some environmental regulation, and safety regulation for all vessels in State waters other than those that are the responsibility of the port corporations.

... the bill seeks to amend the Ports Corporatisation and Waterways Management Act to set out the principal functions of the Maritime Authority. The bill also seeks to expressly provide that the Maritime Authority is to exercise maritime or other functions of the Minister under the marine and other legislation as is delegated to it by the

¹⁵ Proposed amended s 12, s 13 and s 15 of the Act enable the Minister to exercise functions rather than the Governor; and amended Sch 5 to the Act provides that operating licences previously issued by the Governor and still in force are taken to have been issued under the amended provisions of the Act.

Minister. It is important to note that the Maritime Authority has taken on a number of functions under non-maritime legislation...It is therefore proposed to amend the Ports Corporatisation and Waterways Management Act to provide the Maritime Authority with a statutory power of delegation.

This will assist with the administration of its important environmental and other roles and responsibilities. The bill also makes sure that there can be no doubt about the validity of any past approvals issued by the authority when the Minister of the day had sought to delegate responsibility to the Maritime Authority or its predecessors.¹⁶

The Bill

4. Currently, the Act provides that the Minister can delegate functions conferred on the Minister under the marine legislation [s 27].¹⁷ The Bill enables the Minister to delegate to certain authorised persons functions under other legislation conferred on the Minister in his or her capacity as the Minister administering the Act [proposed new s 27(1)].
5. The Bill also enables the Maritime Authority to delegate to certain authorised persons functions conferred on the Authority [proposed new s 41A].

Issues Considered by the Committee

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| 6. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

¹⁶ Hon J G Tripodi MP, Minister for Ports and Waterways, Legislative Assembly *Hansard*, 17 October 2006.

¹⁷ The *marine legislation* means the Act, the *Marine Safety Act 1998*, the *Marine Pollution Act 1987*, any other Act prescribed by the Regulations, and the Regulations and other instruments made under any of those Acts: s 3(1) of the Act.

10. NATIONAL PARK ESTATE (LOWER HUNTER REGION RESERVATIONS) BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Bob Debus
Portfolio: Environment

Purpose and Description

1. The objects of this Bill are:
 - (a) to transfer certain lands to the national park estate, and
 - (b) to amend the *National Parks and Wildlife Act 1974* in relation to special areas under the *Hunter Water Act 1991* that are within the national park estate to provide for the following:
 - (i) the joint preparation and implementation of plans of management for that land by the Director-General of the Department of Environment and Conservation and the Chief Executive Officer of the Hunter Water Corporation, and for the joint adoption of those plans by the Minister for the Environment and the Minister for Natural Resources,
 - (ii) the carrying out of development for certain purposes by or on behalf of the Hunter Water Corporation, and
 - (c) to amend the *Hunter Water Act 1991* to provide that the Hunter Water Corporation is the owner of all works on land within a special area under that Act that is part of the national park estate.

Background

2. The following background is provided in the second reading speech:

The final Lower Hunter Regional Strategy and the draft Lower Hunter Regional Conservation Plan were released by the Premier, Minister Sartor and me today, 17 October 2006. The regional strategy and regional conservation plan clearly define priority areas for development and conservation over the next 25 years...

To summarise, the bill facilitates the transfer of government-owned land to various new conservation reserves under the National Parks and Wildlife Act 1974. The Government land to be transferred via the bill include approximately 8,300 hectares of State forest, approximately 1,100 hectares of Crown land, approximately 4,500 hectares of Crown land currently managed by the Hunter Water Corporation and approximately 1,500 hectares of land currently managed by the Regional Land Management Corporation.

In addition, the bill provides for the reclassification of approximately 2,900 hectares of State forest to flora reserves under the Forestry Act 1916 which will allow for enhanced and secure conservation of those areas. The Department of Environment and Conservation will continue working with the relevant government agencies to

refine the reserve boundaries and reserve categories as necessary. The bill also contains important safeguards to protect the rights and entitlements of persons who may be using the lands that will be transferred or be subject to this draft legislation. These safeguards are important and provide security for people whose lands may change tenure.¹⁸

Issues Considered by the Committee

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| <p>3. The Committee did not identify any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p> |
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The Committee makes no further comment on this Bill.

¹⁸ The Hon Bob Debus, Minister for the Environment, Legislative Assembly *Hansard*, 17 October 2006.

11. POLICE AMENDMENT (MISCELLANEOUS) BILL 2006

Date Introduced: 20 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Carl Scully MP
Portfolio: Police

Purpose and Description

1. The Bill amends the *Police Act 1990* [the Act] and other Acts to:
 - provide for a range of incidents involving the death of or injury to a person where police officers must undergo drug and alcohol testing;
 - provide for off duty police officers to be recalled to duty, on a targeted basis, for drug testing;
 - provide for the testing of police officers, on a targeted basis, for steroid use;
 - amend the Police Act to rename NSW Police the NSW Police Force;
 - remove the distinction between categories of police complaints; and
 - make other miscellaneous amendments to that Act and other Acts arising out of a statutory review of the Police Act.

Background

2. The following background was provided in the second reading speech:

The provisions contained in this Bill have arisen from two separate processes.

Schedule 1 to the Bill provides for the implementation of the recommendations from the Police Integrity Commission's report on Operation Arabella regarding the testing of police officers for illegal drugs and steroids.

Schedule 2 of the Bill includes legislative proposals arising from the statutory review of the Police Act 1990 which sought to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.¹⁹

The Bill

Testing for alcohol, drugs and steroids

3. Currently, drug and alcohol testing of police officers may take place when there is a police motor vehicle pursuit, the discharge of a firearm by a police officer, or a death in police custody. The Bill extends the circumstances in which testing may take place and makes it mandatory for the officers concerned to undergo both drug and alcohol testing [proposed s 211A]. Testing will now be mandatory where a death or injury occurs as a result of the application of physical force by a police officer, as a result of

¹⁹ Hon P C Scully MP, Minister for Police, Legislative Assembly *Hansard*, 20 October 2006.

detention by a police officer, or after an incident involving a police aircraft, motor vehicle or vessel.²⁰

4. The Bill provides that a police officer of or above the rank of superintendent may direct an off duty police officer to accompany another officer to police premises²¹ to provide a urine or hair sample (or both) for drug testing purposes [proposed amended s 211A]. Such testing is to be conducted on a targeted basis, as determined by the Commissioner of Police [the Commissioner].²²
5. The Bill also provides that a code of behaviour may be established by the regulations relating to the use of steroids by police officers [proposed amended s 211B]. Such a code may deal with the consequences of a positive test for steroids, follow-up testing and other matters.

Complaints against police

6. The Bill abolishes the current distinction between Category 1 complaints about police officers - which are investigated by the Police Integrity Commission [PIC] - and Category 2 complaints about police officers, which are investigated by the Ombudsman or the Commissioner [proposed amended s 121].
7. The Bill provides that PIC may direct that information about any complaint *not* be entered into the complaints information system, a power formerly limited to Category 1 complaints [proposed amended s 129].
8. The Bill removes the requirement for the Commissioner to refer complaints received to PIC, as information about these complaints will be available on the complaints information system. However, notifiable complaints must still be notified to the Ombudsman [proposed s 130].
9. The Bill also empowers PIC not to refer a complaint received by it to the Commissioner on the ground that it is not in the public interest to do so, though such a complaint may be referred to the Ombudsman [proposed s 131].

Issues Considered by the Committee

<p>10. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i>.</p>

The Committee makes no further comment on this Bill.

²⁰ Thus, a **mandatory testing incident** means an incident where a person is killed or seriously injured:

- as a result of the discharge of a firearm by a police officer;
- as a result of the application of physical force by a police officer;
- while detained by a police officer, or while in police custody; or
- in circumstances involving a police aircraft, motor vehicle or vessel: proposed amended s 217A(7).

²¹ "Police premises" means any police station, command, building, structure or any other area occupied from time to time by the NSW Police Force: amended s 211A(7).

²² The Bill extends the regulation-making power in s 211A to enable regulations to be made in relation to the issue of a reasonable excuse offered by a police officer for failing to return to duty for the purpose of submitting to testing for the presence of prohibited drugs.

12. QUARANTINE STATION PRESERVATION TRUST BILL 2006*

Date Introduced: 28 September 2006
House Introduced: Legislative Assembly
Member Responsible: Michael Richardson MP

Purpose and Description

1. The Quarantine Station situated on Sydney's North Head is currently part of the Sydney Harbour National Park. It has significant cultural and historical values that make it unique among National Parks and Wildlife lands.
2. The object of this Bill is to establish a new Trust, to be known as the Quarantine Station Preservation Trust, to advise the Minister on the care, control and management of the Quarantine Station, to approve leases or licences relating to the Quarantine Station site and to assist with the preservation of the natural and built environment of North Head.

Background

3. This bill is an updated version of a bill that was introduced in 2003.

The Bill

4. The Bill:
 - provides for the establishment of the Quarantine Station Trust, and sets out the objects and functions of the Trust;
 - specifies limitations on the granting of leases and licences relating to the Quarantine Station site; and
 - provides for the administration of the Trust.

Issues Considered by the Committee

Insufficiently defined administrative powers [s 8A(1)(b)(ii) *LRA*]: Clauses 10 & 11

5. The Bill restricts the Minister's ability to grant leases or licences under the *National Parks and Wildlife Act 1974* in respect of land within the Quarantine Station site.
6. Under the Bill, the Minister must not exercise any power to grant a lease or licence unless:
 - the Minister has received the prior written approval of the Trust (Clause 10); and
 - the Trust has given its approval in accordance with the requirements of clause 11. This requires, *among other things*, that the Trust have regard to:

- (a) any written comments received by the Minister in response to the Minister's notice that were forwarded to the Trust, and
 - (b) any written comments received directly by the Trust in response to the Minister's notice, and
 - (c) the impact of the proposal on open space at the Quarantine Station site, the floor area of buildings on the site and the significant heritage fabric of the Quarantine Station site.
7. Any lease or licence that is purportedly granted by the Minister, without complying with these requirements, is void. Consequently, any lessee's or licensee's rights are dependent on both the Minister receiving written approval from the Trust, and the Trust's compliance with clause 11. A lessee or licensee would therefore need to make certain that these conditions had been met prior to entering into the lease or taking up the licence.
8. Assurance from the Minister that the Trust had given written approval would be relatively straightforward to obtain. However, the Bill provides no means of obtaining assurance that the Trust has had regard to the factors required by clause 11 when granting the approval. It appears open for any person with standing to bring an action challenging an approval granted by the Trust, and, if successful, have the lease declared void.
9. A prospective lessee or licensee would therefore need to investigate the adequacy of any approval given by the Trust in order to gain assurance that a lease or licence was validly granted by the Minister. Such an investigation would not necessarily put the validity of a lease beyond doubt.
- 10. Clause 11(3) may create uncertainty regarding whether any lease or licence the Minister purports to issue under the Bill is valid. The Committee refers to Parliament the question of whether this makes the rights of a lessee or licensee under the Bill unduly dependent upon insufficiently defined administrative powers.**

The Committee makes no further comment on this Bill.

13. RACING LEGISLATION AMENDMENT BILL 2006

Date Introduced: 20 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Grant McBride MP
Portfolio: Gaming and Racing

Purpose and Description

1. The objects of this Bill are:
 - (a) to amend the *Racing Administration Act 1998* to make further provision with respect to the publication of certain information (whether in New South Wales or elsewhere) about intended races of horses or greyhounds to be held at race meetings on licensed racecourses in New South Wales, and
 - (b) to amend the *Greyhound and Harness Racing Administration Act 2004* and the *Thoroughbred Racing Act 1996* to omit certain provisions of those Acts that have been held to be invalid by the Full Court of the Federal Court.

Background

2. The following background is provided in the second reading speech:

The main purpose of the race fields proposal is to address the issue of wagering operators 'free-riding' on New South Wales racing events. Some operators do not contribute to the cost of staging racing events but they use them as a platform for their gambling services from which they profit.

The Bill provides for a relevant controlling body to give approval to publish race fields. Such approval may be subject to conditions including the payment of a fee for the right to publish race fields.

A relevant controlling body is Racing NSW for thoroughbred racing, Harness Racing NSW for harness racing, and Greyhound Racing NSW for the greyhounds.

The Bill also provides for merit review of decisions made in the circumstances where an application is denied, when conditions are imposed and if an approval is cancelled or varied. Appropriate associated notice and procedural matters are set out in the Bill.²³

Issues Considered by the Committee

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| 3. The Committee has not identified any issues under s 8A(1)(b) of the <i>Legislation Review Act 1987</i> . |
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The Committee makes no further comment on this Bill.

²³ Mr Neville Newell, Parliamentary Secretary, Legislative Assembly *Hansard*, 20 October 2006.

14. STATE REVENUE LEGISLATION AMENDMENT (TAX CONCESSIONS) BILL 2006

Date Introduced: 17 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Michael Costa MLC
Portfolio: Treasurer

Purpose and Description

1. The Bill amends the *Duties Act 1997*, the *Land Tax Management Act 1956* and makes consequential amendments to other Acts (*Gaming Machine Tax Act 2001*, the *Valuation of Land Act 1916*, and the *Taxation Administration Act 1996*).

Background

2. The Second Reading Speech stated:
The [Bill] implements land tax changes announced in the 2006-2007 Budget. The Bill also clarifies and extends a number of concessions from State taxes.²⁴

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

²⁴ Mr Paul McLeay, Parliamentary Secretary, Second Reading Speech, Legislative Assembly Hansard, 17 October 2006.

15. WESTERN SYDNEY PARKLANDS BILL 2006

Date Introduced: 20 October 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Frank Sartor MP
Portfolio: Planning

Purpose and Description

1. The objects of this Bill are:
 - (a) to establish the Western Sydney Parklands, and
 - (b) to establish the Western Sydney Parklands Trust as a NSW Government agency, and
 - (c) to set out its objectives and functions, which are principally to develop the Western Sydney Parklands into a multi-use urban parkland for the region of Western Sydney and to maintain and improve the Parklands on an ongoing basis, and
 - (d) to enable the Governor to transfer to the Trust specified property of a government agency by order published in the Gazette.

Background

2. In his second reading speech, the Minister said:

This Bill formally establishes the Western Sydney Parklands, a 27-kilometre corridor of open space stretching from Doonside to Leppington. It also creates a trust to develop and manage these parklands...

The Bill brings to fruition more than 30 years of careful planning and prudent land acquisition by successive New South Wales governments using the Sydney Regional Development Fund... The future corridor was first identified in 1968 under the Sydney Region Outline Plan. Piece by piece, the land acquisition program has continued and Western Sydney now boasts one of the largest continuous urban green spaces in the world...²⁵

Issues Considered by the Committee

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

The Committee makes no further comment on this Bill.

²⁵ The Hon Frank Sartor MP, Minister for Planning, Second Reading Speech, Legislative Assembly *Hansard*, 20 October 2006.

SECTION B: MINISTERIAL CORRESPONDENCE — BILLS PREVIOUSLY CONSIDERED

16. CRIMES (APPEAL AND REVIEW) AMENDMENT (DOUBLE JEOPARDY) BILL 2006 AND CRIMES (APPEAL AND REVIEW) AMENDMENT (DNA REVIEW PANEL) BILL 2006

Date Introduced: 19 September 2006
House Introduced: Legislative Assembly
Minister Responsible: The Hon Morris Iemma MP
Portfolio: Premier

Background

1. The Committee considered these Bills at its meeting of 26 September 2006 and resolved to write to the Premier for advice on a number of matters of concern, including:
 - protection of the fundamental right of a person not to be tried twice for the same offence;
 - fair trial rights, including the right to be tried to without undue delay and to have legal representation; and
 - equality before the law.
2. The specific questions the Committee asked the Premier are set out in the correspondence attached to this paper.

Premier's Response

3. The Premier's response to the Committee, received on 17 October 2006, answered each of the Committee's questions. For example, in response to the Committee's concern that removing the double jeopardy rule under the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006* would trespass on a fundamental human right recognised by the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a party, the Premier wrote:

The Government is confident that the Bill as it currently stands is consistent with international human rights standards.
4. On this point, the Premier referred to the House of Commons Joint Committee on Human Rights which, having considered UN Human Rights Committee comments and case law, concluded that there is an 'implied exception' to the principle of double jeopardy under the ICCPR in cases where there is new or newly discovered facts or a fundamental defect in the earlier proceedings.

5. The Premier's answers to the other questions raised by the Committee are set out in the correspondence attached to this paper.

Comment

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| <p>6. The Committee thanks the Premier for his response.</p> |
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PARLIAMENT OF NEW SOUTH WALES
LEGISLATION REVIEW COMMITTEE

26 September 2006

Our Ref: LRC2039/LRC2052

Your Ref:

The Hon Morris Iemma MP
Premier
Level 40 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Premier

**CRIMES (APPEAL & REVIEW) AMENDMENT (DOUBLE JEOPARDY) BILL 2006 &
CRIMES (APPEAL & REVIEW) AMENDMENT (DNA REVIEW PANEL) BILL 2006**

Pursuant to its obligations under s 8A of the *Legislation Review Act 1987*, the Committee has considered the above Bills. The Committee will be reporting its consideration of the Bills in its *Legislation Review Digest No 13 of 2006*.

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

CRIMES (APPEAL AND REVIEW) AMENDMENT (DOUBLE JEOPARDY) BILL 2006

Infringing the Rule against double jeopardy

As you noted in your second reading speech, the double jeopardy rule is a fundamental principle of the common law, protecting individuals against abuses by the state and ensuring that criminal proceedings can be finalised. The rule is also recognised as a fundamental human right under Article 14(7) of the ICCPR and other human rights treaties.

The Committee notes that international jurisprudence recognises a distinction between two types of proceedings that might be considered to offend the double jeopardy rule:

- (1) retrial for an offence for which a defendant has been finally acquitted, which is incompatible with the ICCPR; and
- (2) re-opening a trial in exceptional circumstances, which may be compatible with the ICCPR.

This jurisprudence suggests that acquittals may be reviewed and annulled and a new trial ordered without breaching the principle of double jeopardy under international human rights law if the following conditions are met:

- 1) the proceedings are concerned with the same charge and the validity of previous determinations; and
- 2) the proceedings constitute a continuation of the previous proceedings.

The Committee is of the view that, while some features of the Bill appear consistent with the reopening of a trial in exceptional circumstances in a manner compatible with Article 14, certain other aspects do not and appear to risk incompatibility with Australia's obligations under the ICCPR. For example, the Bill gives the Court of Criminal Appeal the power to quash the acquittal or "remove the acquittal as a bar" [cls 100(2) & 101(2)]. The latter technical removal of a 'bar' does not annul or vacate the earlier verdict of acquittal. Quashing of the original legal decision is an important aspect of supervisory review, and due consideration should be given to requiring the Court to quash an acquittal in every case.

Another concern is that the Bill does not confine the new proceedings to retrial for the same offence (ie, the offence that had been the subject of the original acquittal) [cls 100(3) & 101(3)]. Under the Bill, a person may be retried for a life sentence offence, even though the original acquittal related to manslaughter or a lesser offence [cl 100(3)]. Similarly, a person may be retried for an offence with a penalty of imprisonment for 15 years or more, even though the acquittal related to a lesser offence [cl 101(3)].

The Committee is of the view that the review of an acquittal (with the exception of homicide) for a lesser offence, which proceeds to trial on a different, more serious offence, is likely to violate the principle outlined above.

The Committee notes that reframing the Bill to emphasise the *exceptional* character of this form of review and to stress the *continuity* with earlier proceedings might avoid incompatibility with Australia's important treaty obligation under the ICCPR. For example, new proceedings should be restricted to serious offences that are the same as the ones with which an accused was charged at the original trial (subject to the homicide exception). Furthermore, effective procedural safeguards, especially full protection of the defendant's right to a fair trial, must accompany any process of review of earlier decisions.

The Committee seeks your advice as to:

- (a) *whether the Bill can be amended to ensure that it does not provide for the retrial of an offence (as opposed to the resumption or reopening of an original trial) to avoid incompatibility with international human rights standards; and*
- (b) *the justification for the provisions removing acquittal as a bar [proposed ss 100(2) & 101(2)] and allowing retrial for an offence different to that for which the person was acquitted [proposed s 100(3)].*

Fair Trial (Right to trial without undue delay)

The Committee considers that the conduct of the prosecution since the alleged offence, including whether or not the defendant had been put to trial previously and the length of time since the person allegedly committed the offence, are relevant to the Court's consideration of what the "interests of justice require" in an application for retrial.

However, the Committee notes that the Bill is silent as to other legal processes that contribute to delay and place unfair burdens on defendants (eg, where prosecution enters *nolle prosequi*).

The Committee notes the important safeguard in the Bill that prevents more than one application for a retrial under Division 2 [cl 105(1)]. However, the Committee notes that this limitation does not apply to retrials following an appeal on questions of law alone under Division 3. An effect of this is that some verdicts of acquittal may be impugned more than once.

The Committee seeks your advice as to:

- (a) *why the conduct of the prosecution has not been included as a matter for consideration by the Court in determining the interests of justice; and*
- (b) *whether the Bill might be amended to direct the Court to consider not merely the time since the original alleged offence, but also the conduct of the prosecution in the intervening period, including whether or not the defendant had been put to trial previously; and*
- (c) *the justification for allowing more than one proceeding to be brought under Division 3.*

Fair Trial (Prejudice and media)

The Committee notes the potential harm that publication of information about an application for retrial of an acquitted person might cause to that person and their family. The Committee also notes that the Bill provides for non-publication of such information to prevent the identification of persons subject to investigation, application or order for re-trial.

However, the Committee notes that the Bill does not provide that the right to a fair trial is to have priority when considering the interests of justice or that contravention of a prohibition on publication is an offence.

The Committee seeks your advice as to:

- (a) *whether the Bill might be amended to provide that in granting a publication order, the Court should be directed to consider the impact that publication of identifying material will have on any subsequent proceedings; and*

- (b) *whether the seriousness of a breach of the restrictions on publication would be better conveyed if it was framed as a criminal offence rather than as contempt of court.*

Fair Trial (The right to legal representation)

The Committee notes that the Bill does not contain an express right to legal representation for an acquitted person who is subject to an order for re-trial under Division 2 or in relation to appeals on questions of law only under Division 3.

The Committee is of the view that the right to legal representation is a very important feature of a fair trial and notes that it is enshrined in the ICCPR. The Committee also notes that in Australia there is no right to be provided with counsel at the public expense, even in trials for serious offences. Notwithstanding this, the Committee is of the view that, given the removal of the prohibition against double jeopardy and the protection it affords a defendant from inequality and abuse of state power, a right to legal representation at a hearing for a retrial of an acquitted person should be expressly guaranteed in the Bill.

The Committee seeks your advice as to:

- (a) *why the Bill does not provide for a right to legal representation and its funding; and*
- (b) *whether it might be amended to so provide.*

Unclear definition

The Committee notes that the definition under the Bill of “police investigation”, for which authorisation by the DPP is required, does not include reference to forms of investigation such as surveillance, use of listening devices and questioning by informers acting under police direction.

The Committee also notes that the Bill does not give any guidance as to the factors the DPP should consider when deciding under clause 109 whether a police investigation is in the “public interest”. The Committee is of the view that the public interest factors in authorising an investigation are different from those used to guide prosecution discretion.

The Committee seeks your advice as to:

- (a) *whether the Bill might be amended to expand the definition of police investigation to include police investigation activities such as surveillance, use of listening devices and questioning by informers acting under police direction; and*
- (b) *whether the Bill might be amended to include factors relevant to the public interest in proposed s 109(5).*

CRIMES (APPEAL AND REVIEW) AMENDMENT (DNA REVIEW PANEL) BILL 2006**Equality before the law**

The Committee notes that a convicted person is only eligible to make an application to the DNA Review Panel if they were convicted of a relevant offence before 19 September 2006.

The Committee is of the view that this limitation does not address the possibility of a DNA profiling error occurring after 19 September 2006, which could result in a miscarriage of justice. Nor does it contemplate future developments in DNA profiling techniques and technology, which may render previously tested biological material more useful to a convicted person in proving a claim of innocence.

The Committee notes the important human rights principle of equality before the law, enshrined in the ICCPR. The Committee is of the view that the different treatment of similarly situated persons based merely on the date of their conviction without compelling justification violates the right to equality before the law as well as impacting on the right to a fair trial.

The Committee also notes that a convicted person cannot make an application to the Panel unless he or she is currently subject to the sentence imposed on conviction (either in custody or released on parole), or is subject to supervision or detention as a sex offender in connection with their conviction. Thus there is no capacity for an individual who is no longer under sentence to apply to the Panel for the purpose of clearing his or her name by proving that he or she was wrongly convicted.

Given the finite resources available to the Panel, it is justifiable to restrict its work to the most serious cases, namely, those in which individuals are currently subject to deprivation of their liberty as a result of a conviction. Nonetheless, this limitation impacts on the capacity of an individual who has completed their sentence to obtain information which might affect their claim of innocence. This may impinge on the right of the unlawfully imprisoned to claim compensation, which is protected by the common law and under international law (ICCPR).

The Committee is of the view that the need to remedy injustice should not be limited by purely administrative or financial considerations. Proposed section 89(5) creates potential for great injustice, in that individuals who would otherwise be able to clear their name and attempt to restore their standing in the community may not be able to do so without the assistance of the Panel in obtaining and compelling disclosure of relevant DNA information. Indeed, the common law recognises that the duty to rectify a miscarriage of justice extends beyond the sentence, and indeed, even beyond the death of the defendant.

The Committee seeks your advice as to the justifications for excluding those convicted after 19 September 2006 and those who have completed their sentence, from applying to the DNA Review Panel under the Bill.

Sunset provision

The Committee notes that pursuant to the sunset clause in proposed section 97 an eligible convicted person must apply to the Panel before it is abolished. The Committee also notes that no such sunset clause applies to prosecutors wishing to re-try an acquitted person under the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006*.

The Committee is of the view that this different treatment of the prosecution and the defence in relation to DNA evidence violates the principle of equality of arms that underscores the right to fair trial protected under common law and the ICCPR.

The Committee seeks your advice as to:

- (a) *the justifications for this difference; and*
- (b) *whether, in order to address this inequality, the Bill might be amended to remove the sunset clause and provide for the ongoing existence of the Panel.*

Fair Trial (Rights of the Defence)

The Committee notes the duty on the police and other state officers to retain relevant biological material under certain conditions to ensure it is available for DNA testing in the circumstances prescribed by the Bill.

The Committee is of the view that the exceptions to this rule regarding the person ceasing to be an eligible convicted person and the material having already been subject to DNA testing could inappropriately prevent convicted person from challenging the conviction using this material.

The Committee seeks your advice as to the justifications for providing these two exceptions.

Yours sincerely



Allan Shearan MP
Chairman



Premier of New South Wales
Australia

RECEIVED

17 OCT 2006

LEGISLATION REVIEW
COMMITTEE

TCO/15469

16 OCT 2006

Mr Allan Shearan MP
Chairman
Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Shearan

I refer to your correspondence of 26 September 2006 detailing the Legislation Review Committee's review of the Crimes (Appeal & Review) Amendment (Double Jeopardy) Bill 2006 and the Crimes (Appeal & Review) Amendment (DNA Review Panel) Bill 2006.

In your letter you raise a number of issues and questions on behalf of the Committee and seek the Government's advice.

I am pleased to provide the attached response.

I appreciate the Committee's careful consideration of these important Bills and trust this response is of assistance.

Yours sincerely

Morris Iemma MP
Premier

**Response to the Legislation Review Committee's questions concerning
the *Crimes (Appeal & Review) Amendment (Double Jeopardy) Bill 2006*
and *Crimes (Appeal & Review) Amendment (DNA Review Panel) Bill*
2006**

Crimes (Appeal & Review) Amendment (Double Jeopardy) Bill 2006

- 1 *The Committee seeks advice as to whether the Bill can be amended to provide for the resumption or reopening of an original trial as opposed to a retrial to avoid possible incompatibility with international human rights standards.*

The Government is confident that the Bill as it currently stands is consistent with international human rights standards.

The International Convention on Civil and Political Rights provides in Article 14 that:

No-one shall be liable to be tried for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

While this appears absolute on its face, it is not, because, as the Model Criminal Code Officers' Committee point out, a question arises as to what constitutes a final conviction or acquittal.

The House of Commons Joint Committee on Human Rights considered UN Human Rights Committee comments and case law and determined that there is an "implied exception" to the principle of double jeopardy under the International Convention on Civil and Political Rights. It considered this interpretation to be similar to the exception provided under article 4 of protocol 7 to the European Convention on Fundamental Human Rights and Freedoms which allows a case to be reopened if there is new or newly discovered facts or a fundamental defect in earlier proceedings.

Considering both of those conventions and the principles underlying them, the House of Commons Committee reached the view that reopening an earlier acquittal may be permitted, under relevant international law principles, if:

- *There is a legislative scheme in place regulating the circumstances in which a case can be reopened*
- *That scheme limits the reopening to cases where new evidence has become available (or there has been a fundamental defect in the earlier proceedings).*

The Government considers that the House of Commons report provides a good summary of the principles that should apply. Both the UK laws and the NSW Bill comply with these principles.

The Committee asks specifically about whether the legislation should be redrafted to focus on "re-opening" an earlier case, rather than a retrial. This is a difference of form rather than substance and is not supported. In fact, under NSW law the courts have powers to order a "new" trial, commonly

referred to as a "retrial", following appeal, mistrial or a hung jury. In none of these situations is there a question of double jeopardy.

Use of the usual NSW term, "retrial", assists understanding and is straightforward. The term also covers overseas or interstate acquittals being retried in NSW, which could not be "re-opened" or "resumed" (see below for further discussion of this point). The Government does not support changing this term.

The question of the finality of a criminal proceeding and the circumstances when it is fair and consistent with human rights obligations that a matter can be "retried" must be judged as a matter of substance not terminology or form (as the Legislation Review Committee itself notes). Whatever term is used, the key issue is whether the new trial is authorised by law and justified by exceptional circumstances (as pointed out by the House of Commons Committee). The NSW Bill conforms with principle in this regard.

- 2 *The Committee seeks advice as to the justification for the provisions removing acquittal as a bar and allowing a retrial for an offence different to that for which the person was acquitted.*

Removal of acquittal as a bar

The justification for the provisions removing acquittal as a bar as opposed to quashing a conviction is that the Bill covers acquittals obtained interstate and overseas. NSW Courts do not have the power to quash an acquittal obtained out of jurisdiction. For this reason, the Bill includes a provision for an acquittal not being a bar to a retrial.

This is consistent with the UK legislation which also allows overseas acquittals to be retried.

Justification for new charges

First, it should be noted that it would generally be expected that the charge laid in the retrial would be the same as that originally laid. The use of the term "retrial" emphasises this expectation. However, there may be some cases where fresh and compelling evidence comes to light that would justify a more serious charge than originally laid, and where the previous acquittal arising from the same facts would act as a bar to trying the offence. This is recognised in cls 99(1)(b), 100(3), and 101(3).

In such a case, it is appropriate to bring the more serious charge. This is not inconsistent with the concept of reopening the earlier proceeding, which after all was sufficiently related to the facts in issue in the case that it would have operated as a bar on further prosecution of the "new" offence. It is, in a sense, analogous to amending the charges or an indictment after they have been laid.

I note the Committee suggests that homicide should be treated differently and that retrials should be permissible for murder where a person has previously been acquitted of manslaughter. This is simply an example of the principles outlined above. The Bill should also apply in these cases.

- 3 *The Committee seeks advice as to*
- *Why the conduct of the prosecution has not been included as a matter for consideration by the Court in determining the interests of justice; and*
 - *Whether the Bill might be amended to direct the Court to consider not only the time since the original alleged offence, but also the conduct of the prosecution in the intervening period, including whether or not the defendant has been put to trial previously.*

The Bill requires the Court to consider whether retrial is in the interests of justice. It provides that it is not in the interests of justice unless a fair retrial is likely. While it also states that the court is to have regard to two particular matters (delay and prosecutorial diligence in relation to the application for the retrial), it does not limit the matters which the Court may consider.

It would be difficult to list exhaustively the factors that bear on the question of the likelihood of a fair trial, and the interests of justice. They are myriad. This is why the Court of Criminal Appeal is given broad discretion under this section, and can be expected to ensure fairness.

- 4 *The Committee seeks advice as to the justification for allowing more than one proceeding to be brought under Division 3.*

In accordance with the normal rules that apply to accused persons, the prosecution would have only one appeal to the Court of Criminal Appeal following a trial.

The prosecution may, however, appeal on a question of law in the very limited circumstances allowed under cl 107, if there was a retrial following that appeal (or for any other reason) and a further error of law is made at a retrial. So may the accused (who in fact has greater appeal rights than the prosecution). This simply allows errors in a retrial also to be corrected.

- 5 *In relation to the possible threats to a fair trial that could be caused by publicity, the Committee seeks advice in relation to:*
- *Whether the Bill might be amended to provide that in granting a publication order, the Court should be directed to consider the impact that publication of identifying material will have on any subsequent proceedings; and*
 - *Whether the seriousness of a breach of the restrictions on publication would be better conveyed if it was framed as a criminal offence rather than contempt of court.*

The provisions of the Bill contain strong safeguards against publication of details of a case and the risk it may prejudice proceedings. The Court is given a discretion to override this protection in cases where it considers the interests of justice so require. The Courts deal with these kinds of questions every day and are well placed to do so. The Government is satisfied that the existing provisions are adequate to deal with the risks surrounding publication.

A breach of a restriction on publication is a serious matter. The Bill provides that such a breach is contempt of the Supreme Court - that is, failure to

Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 and Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006

comply with a Supreme Court order – which treats it very seriously indeed and gives the Court strong power to punish it.

- 6 *The Committee seeks advice as to why the Bill does not provide for a right to legal representation and its funding and whether it might be amended to so provide.*

The accused has a right to counsel in relation to any matter dealt with under the Bill, as he or she would in any proceeding before a court. There is no need to provide for such a right under the Bill.

As the Committee has noted, in Australia, there is no right to be provided with counsel at public expense, even in trials for serious offences. Providing such a right in this Bill would be open to abuse. This would mean the State may have to fund representation of an affluent person facing a retrial application when they have been convicted of jury tampering in respect of their original trial.

Accused persons will have access to legal representation through Legal Aid if they meet the means and merits criteria determined by Legal Aid. As the Committee is aware, the Court also has the power to adjourn proceedings if it believes they cannot proceed fairly in the absence of legal representation.

- 7 *The Committee seeks advice as to whether the Bill might be amended to expand the definition of police investigation to include police investigation activities such as surveillance, use of listening devices and questioning by informers acting under police direction*

The purpose of Clause 109 requiring DPP consent for police investigations in relation to a retrial under Division 2 is to protect the accused person from the intrusion of a police investigation without justification. Arrest, search, questioning, or forensic procedures are all covered by this provision.

It is unnecessary to include surveillance through the use of listening devices under this section because the use of listening devices is already closely regulated under the *Listening Devices Act 1984 (NSW)*. Police wishing to use a listening device must apply to have their application approved/granted by a Justice of the Supreme Court. This is a more stringent control than approval by the DPP under Clause 109.

- 8 *The Committee seeks advice as to whether the Bill might be amended to include factors relevant to the public interest in cl 109(5).*

The question of the public interest in pursuing an investigation is a broad one, and many factors would bear. The DPP is well placed to consider these issues, and should be given broad discretion to do so. The Government does not consider further direction is necessary.

Crimes (Appeal & Review) Amendment (DNA Review Panel) Bill 2006

- 9 *The Committee seeks advice as to justifications for excluding those convicted after 19 September 2006 and those who have completed their sentence, from applying to the DNA Review Panel under the Bill.*

The Bill is directed to a specific and temporary situation regarding the introduction of DNA technology. These days, testing of biological material and presenting DNA evidence based on it is a routine part of trials. The role of the Panel is therefore limited to past cases in which DNA technology may not have been fully utilised. A cut off date is justified, though any particular date might be seen as, necessarily, somewhat arbitrary. The date chosen is the date of introduction of the Bill into the Parliament which the Government considers represents a fair and reasonable cut off.

The general provisions of Part 13A of the *Crimes Act 1900* (as re-enacted in this Bill) remain the principal means for a person to seek review of his or her conviction. Part 13A is available to any other person who may seek to review his or her conviction on any basis, before or after release.

Access to the DNA Review Panel should therefore be seen as merely supplementing existing extensive review mechanisms for those cases where DNA issues are most likely to arise and the need for review may be most pressing. This is why its focus is primarily on persons convicted of serious crimes (carrying a maximum penalty of 20 years imprisonment or more) and those who remain subject to a sentence of imprisonment.

10 *The Committee seeks advice as to*

- *The justification for including sunset provisions in the DNA Review Panel Bill but not in the Double Jeopardy Bill.*
- *Whether the Bill might be amended to remove the sunset clause and provide for the ongoing existence of the Panel.*

The two Bills are related in that they both address the issues of review of convictions and acquittals and can be seen as two elements in the overall balance of the criminal justice system.

However, they address two fundamentally different issues, and should not be seen as giving corresponding rights to the prosecution and convicted persons. In terms of appeal and review of unsafe convictions, the accused has now, and will have after enactment of these Bills, far greater rights than the prosecution.

The double jeopardy reform addresses situations where fresh and compelling evidence has come to light (whether DNA related or not) and where a trial has been tainted by an administration of justice offence.

If either of these situations comes to light and throws doubt on a conviction, the accused already has access to review under the provisions of Part 13A of the Crimes Act (re-enacted in the Crimes Appeal and Review (DNA Review Panel) Bill). The re-enacted Part 13A has no sunset provision.

Similarly, double jeopardy reforms do not sunset because fresh and compelling evidence, or tainted acquittals, could easily arise in the future.

The DNA Review Panel on the other hand, is solely concerned with DNA and giving the accused assistance in having DNA tested in cases where it was not tested at trial. These provisions apply to past convictions because DNA technology was not always routinely used in the past.

The DNA Review Panel is designed to address a specific problem at a specific point in time; it is therefore likely that its work will end within a limited space of time. The sunset provisions have been incorporated into the Bill to ensure that a body with no clear purpose is not retained.

Ongoing issues of unsafe convictions, whether related to DNA or otherwise, can already be dealt with under the broad powers of the re-enacted Part 13A of the Crimes Act, and will continue to be dealt with in this way.

- 11 *The Committee seeks advice as to justifications for providing exceptions to obligations for police and other state officers having to retain evidence if the convicted person is no longer eligible or the material has already been subject to DNA testing.*

This Bill does not purport to define or codify the circumstances in which Police should retain evidence. The law has never done this and existing appeal and review mechanisms have functioned perfectly adequately.

The obligations for police and other state officers to retain evidence in this Bill have been provided specifically to assist the DNA Review Panel and they are specially linked to its functions. If the person is no longer eligible to apply to the Panel, or if the evidence has already been tested, the provisions will no longer apply.

Part Two – Regulations

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

Regulation	Gazette reference		Information sought	Response Received
	Date	Page		
Conveyancing (Sale of Land) Amendment (Smoke Alarms) Regulation 2006	28/04/06	2387	25/08/06	
Native Vegetation Amendment (Private Native Forestry) Regulation (No 2) 2006	29/09/06	8467	13/10/06	
Road Transport (General) Regulation 2005	30/09/05	7738	13/10/06	

Appendix 1: Index of Bills Reported on in 2006

	Digest Number
Adoption Amendment Bill 2006	15
Air Transport Amendment Bill 2006	2
Apiaries Amendment Bill 2006	10
Appropriation Bill 2006	9
Appropriation (Budget Variations) Bill 2006	6
Appropriation (Parliament) Bill 2006	9
Appropriation (Special Offices) Bill 2006	9
Bail Amendment (Lifetime Parole) Bill 2006	12
Business Names Amendment Bill 2006	11
Careel Bay Protection Bill 2006*	2
Channel 7 Former Epping Site Protection Bill 2006*	10
Charter of Budget Honesty (Election Promises Costing) Bill 2006	15
Child Protection (International Measures) Bill 2006	2
Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill 2006	11
Children and Young Persons (Care and Protection) Bill 2006	7
Children (Detention Centres) Amendment Bill 2006	8
Civil Liability Amendment Bill 2006	7
Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill 2006	8
Community Protection (Closure of Illegal Brothels) Bill 2006*	12
Constitution Amendment (Governor) Bill 2006	7
Conveyancers Licensing Amendment Bill 2006	7
Correctional Services Legislation Amendment Bill 2006	8
Courts Legislation Amendment Bill 2006	4
Courts Legislation Further Amendment Bill 2006	8
Crimes (Administration of Sentences) Amendment Bill 2006	15
Crimes and Courts Legislation Amendment Bill 2005	1
Crimes Amendment (Apprehended Violence) Bill 2006	11
Crimes Amendment (Murder of Police Officers) Bill 2006*	7
Crimes Amendment (Organised Car and Boat theft) Bill 2006	4
Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	13
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006	13

	Digest Number
Crimes (Forensic Procedures) Amendment Bill 2006	14
Crimes Legislation Amendment (Gangs) Bill 2006	10
Crimes (Serious Sex Offenders) Bill 2006	5
Crimes (Sentencing Procedure) Amendment Bill 2006	5
Crimes (Sentencing Procedure) Amendment (Gang Leaders) Bill 2006*	3
Criminal Procedure Amendment (Sexual and Other Offences) Bill 2006	15
Crown Lands Legislation (Carbon Sequestration) Bill 2006	15
Deer Bill 2006	10
Duties Amendment (Abolition of State Taxes) Bill 2006	9
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	8
Education Amendment (Financial Assistance to Non-Government Schools) Bill 2006	9
Education Legislation Amendment (Staff) Bill 2006	6
Election Funding Amendment Bill 2006	15
Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006	15
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	6
Environmental Planning and Assessment Amendment Bill 2006	2
Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006	4
Fair Trading Amendment Bill 2006	8
Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill 2006	11
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	2
Firearms Amendment (Good Behaviour Bonds) Bill 2006*	2
Fisheries Management Amendment Bill 2006	2
Freedom of Information Amendment (Improving Public Access to Information) Bill 2006*	14
Freedom of Information Amendment (Open Government-Disclosure of Contracts) Bill 2005	1
Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006	12
Independent Commission Against Corruption Amendment (Operations Review Committee) Bill 2006	5
Industrial Relations Amendment Bill 2006	3
Interpretation Amendment Bill 2006	8
James Hardie (Civil Liability) Bill 2005	1
James Hardie (Civil Penalty Compensation Release) Bill 2005	1
James Hardie Former Subsidiaries (Winding up and Administration) Bill 2005	1
Judicial Officers Amendment Bill 2006	6

	Digest Number
Jury Amendment (Verdicts) Bill 2006	5
Land Tax Management Amendment (Tax Threshold) Bill 2006	2
Law Enforcement (Controlled Operations) Amendment Bill 2006	3
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	1
Legal Profession Amendment Bill 2006	5
Liquor Amendment (2006 FIFA World Cup Hotel Trading) Bill 2006	8
Local Government Amendment (Miscellaneous) Bill 2006	6
Local Government Amendment (Waste Removal Orders) Bill 2006	8
Motor Accidents Compensation Amendment Bill 2006	3
Motor Accidents (Lifetime Care and Support) Bill 2006	3
Motor Vehicle Repairs (Anti-steering) Bill 2006*	4
Mount Panorama Motor Racing Amendment Bill 2006	14
National Parks and Wildlife (Adjustment of Areas) Bill 2006	2
National Parks and Wildlife Amendment (National Parks Volunteer Service) Bill 2006*	14
National Park Estate (Lower Hunter Regions Reservations) Bill 2006	15
Parliamentary Electorates and Elections Amendment Bill 2006	10
Passenger Transport Amendment Bill 2006	15
Pharmacy Practice Bill 2006	7
Pipelines Amendment Bill 2006	7
Police Amendment (Death and Disability) Bill 2005	1
Police Amendment (Miscellaneous) Bill 2006	15
Police Amendment (Police Promotions) Bill 2006	10
Police Integrity Commission Amendment Bill 2006	10
Ports Corporatisation and Waterways Management Amendment Bill 2006	15
Professional Standards Amendment (Defence Costs) Bill 2006	12
Protection of the Environment Operations Amendment (Waste Reduction) Bill 2006	3
Public Sector Employment Legislation Amendment Bill 2006	3
Quarantine Station Preservation Trust Bill 2006*	15
Racing Legislation Amendment Bill 2006	15
Road Transport (General) Amendment (Intelligent Access Program) Bill 2006	11
Road Transport Legislation Amendment (Drug Testing) Bill 2006	12
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	3
Security Industry Amendment (Patron Protection) Bill 2006*	7

	Digest Number
Smoke-free Environment Amendment (Removal of Exemptions) Bill 2006*	4
Snowy Hydro Corporatisation Amendment (Parliamentary Scrutiny of Sale) Bill 2006	9
Snowy Hydro Corporatisation Amendment (Protect Snowy Hydro) Bill 2006	9
State Property Authority Bill 2006	7
State Revenue and Other Legislation Amendment (Budget Measures) Bill 2006	9
State Revenue Legislation Amendment Bill 2006	8
State Revenue Legislation Amendment (Tax Concessions) Bill 2006	15
Statute Law (Miscellaneous Provisions) Bill 2006	8
Succession Bill 2006	12
Summary Offences Amendment (Display of Spray Cans) Bill 2006	7
Superannuation Legislation Amendment Bill 2006	8
Sydney Cricket and Sports Ground Amendment Bill 2006	8
Sydney Water Catchment Management Amendment (Warragamba) Bill 2006	14
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006	9
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	6
Transport Administration Amendment (Travel Concession) Bill 2006	9
University of Technology (Kuring-gai Campus) Bill 2006*	8
Valuation of land Amendment Bill 2006	7
Water Management Amendment (Water Property Rights Compensation) Bill 2006	5
Western Sydney Parklands Bill 2006	15
Workers Compensation Legislation Amendment Bill 2006	4
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Bill 2005	1
Young Offenders Amendment (Reform of Cautioning and Warning) Bill 2006*	8

Appendix 2: Index of Ministerial Correspondence on Bills

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Children (Detention Centres) Bill 2006	Minister for Juvenile Justice	02/06/06	27/06/06		8, 9
Commission for Children and Young People Amendment Bill 2005	Minister for Community Services	25/11/05	25/08/06	15	10
Companion Animals Amendment Bill 2005	Minister for Local Government	25/11/05	15/12/05		1
Confiscation of Proceeds of Crime Amendment Bill 2005	Attorney General	10/10/05	23/11/05	11	1
Correctional Services Legislation Amendment Bill 2006	Minister for Justice	02/06/06			8
Crimes Amendment (Road Accidents) Bill 2005	Attorney General	10/10/05	12/12/05	11	1
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006 & Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	Premier	26/09/06	17/10/06		13,15
Crimes Legislation Amendment (Gangs) Bill 2006	Minister for Police	05/09/06			10
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill 2005	Attorney General	23/05/05	19/04/06	6	5
Crimes (Serious Sex Offenders) Bill 2006	Minister for Justice	28/04/06			5
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	Attorney General	02/06/06	02/08/06		8,9
Education Legislation Amendment (Staff) Bill 2006	Minister for Education and Training	09/05/06	23/05/06		6,8
Fair Trading Amendment Bill 2006	Minister for Fair Trading	02/06/06	07/06/06		8,12
Local Government Amendment (Waste Removal Orders) Bill 2006	Minister for Local Government		09/06/06		8,9
Motor Accidents Compensation Amendment Bill 2006 and Motor Accidents (Lifetime Care and Support) Bill 2006	Minister for Commerce	24/03/06	26/04/06		3,5
Smoke-free Environment Amendment Bill 2004	Minister for Health	05/11/05	12/01/06		2
State Revenue Legislation Amendment Bill 2005	Treasurer	20/06/05	03/01/05	8	1
Terrorism (Police Powers) Amendment (Preventative Detention) Bill 2005	Attorney General	25/11/05	16/05/06	15	7
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006	Minister for Gaming and Racing	09/05/06	24/05/06		6,8
Transport Administration Amendment (Public Transport Ticketing Corporation) Bill 2005	Minister for Transport	25/11/05 28/04/06	05/04/06	15	5

Bill	Minister/Member	Letter sent	Reply received	Digest 2005	Digest 2006
Vocational Education and Training Bill 2005	Minister for Education and Training	04/11/05	28/11/05	13	1
Water Management Amendment Bill 2005	Minister for Natural Resources	25/11/05	05/09/06	15	11

Appendix 3: Bills that received comments under s 8A of the Legislation Review Act in 2006

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Careel Bay Protection Bill 2006*	R				
Channel 7 Former Epping Site Protection Bill 2006*	R				
Children (Detention Centres) Amendment Bill 2006	R, C				
Community Protection (Closure of Illegal Brothels) Bill 2006*	R				
Correctional Services Legislation Amendment Bill 2006	R, C				
Crimes Amendment (Apprehended Violence) Bill 2006	R				
Crimes Amendment (Murder of Police Officers) Bill 2006*	R				
Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2006	R, C	R, C			
Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2006	R, C	R, C			
Crimes (Forensic Procedures) Amendment Bill 2006	N				
Crimes Legislation Amendment (Gangs) Bill 2006	R, C				
Crimes (Sentencing Procedure) Amendment Bill 2006	R				
Crimes (Serious Sex Offenders) Bill 2006	R, C				
Criminal Procedure (Sexual and Other Offences) Bill 2006	N				
Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Bill 2006	R, C				
Education Legislation Amendment (Staff) Bill 2006	R, C	R, C	R, C	R, C	R, C

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Electricity Supply Amendment (Greenhouse Gas Abatement Scheme) Bill 2006				R	
Electricity Supply Amendment (Protection of Electricity Works) Bill 2006	R				
Environmental Planning and Assessment Amendment Bill 2006	R				
Fair Trading Amendment Bill	R, C				
Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill 2006					N
Fines Amendment (Payment of Victims Compensation Levies) Bill 2006	N				
Fisheries Management Amendment Bill 2006	R				
Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006	R				
Jury Amendment (Verdicts) Bill 2006	R				
Law Enforcement (Controlled Operations) Amendment Bill 2006	R				
Law Enforcement Legislation Amendment (Public Safety) Bill 2005	R				
Local Government Amendment (Waste Removal Orders) Bill 2006	R		R		
Motor Accidents (Lifetime Care and Support) Bill 2006	R, C		R, C	R	R
Motor Accidents Compensation Amendment Bill 2006	R, C		R, C		
Motor Vehicles Repairs (Anti-steering) Bill 2006	R				
Parliamentary Electorates and Elections Amendment Bill 2006	R				
Pipelines Amendment Bill 2006			R		R
Police Amendment (Police Promotions) Bill 2006				R	

	(i) Trespasses on rights	(ii) insufficiently defined powers	(iii) non reviewable decisions	(iv) delegates powers	(v) parliamentary scrutiny
Quarantine Station Preservation Trust Bill 2006*		R			
Royal Rehabilitation Centre Sydney Site Protection Bill 2006*	R				
Security Industry Amendment (Patron Protection) Bill 2006*	R				
Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006				R	
Totalizator Legislation Amendment (Inter-jurisdictional Processing of Bets) Bill 2006		R, C			
Transport Administration Amendment (Travel Concession) Bill 2006				R	
University of Technology (Kuring-gai Campus) Bill 2006*	R				

Key

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

Appendix 4: Index of correspondence on regulations reported on in 2006

Regulation	Minister/Correspondent	Letter sent	Reply	Digest 2006
Centennial Park and Moore Park Trust Regulation 2004	Minister for Tourism and Sport and Recreation	29/04/05	19/01/06	1
Companion Animals Amendment (Penalty Notices) Regulation 2005	Minister for Local Government	12/09/05	21/12/05	1
Electricity (Consumer Safety) Regulation 2006	Minister for Fair Trading	28/04/06	20/06/06	9
Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005	Minister for Planning	12/09/05	24/12/06	3
Gaming Machine Amendment (Payment of Prize Money) Regulation 2006	Minister for Gaming and Racing	25/08/06	10/10/06	14
Health Records and Information Privacy Regulation 2006	Minister for Health	28/04/06	27/06/06	9
Hunter Water (General) Regulation 2005	Minister for Utilities	04/11/05	09/01/06	1
Motor Accidents Compensation Regulation 2005	Minister for Commerce	28/04/06	24/07/06	9
Photo Card Regulation 2005 and Photo Card Amendment (Fee and Penalty Notice Offences) Regulation 2006	Minister for Roads	25/08/06	06/10/06	14
Protection of the Environment Operations (Waste) Regulation 2005	Minister for the Environment	04/11/05	29/11/05	1
Stock Diseases (General) Amendment Regulation 2005	Minister for Primary Industries	12/09/05	07/02/06	1
Photo Card Regulation 2005	Minister for Roads	26/04/06 25/08/06	21/08/06	9
Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003	Minister for Roads		03/08/06	9
Workers Compensation Amendment (Advertising) Regulation 2005	Minister for Commerce	12/09/05	28/11/05	1